

Tuesday – August 13, 2013 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; Interim City Attorney Martha Walker-McGlohon; and Deputy City Clerk Jaime Matthews

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

A. EMPLOYEE RECOGNITIONS

City Manager Jackson recognized (1) Daryl Rice, Rob Martin and Kevin Haughinberry for receiving their Compressed Natural Gas Certification; (2) Fire Battalion Chief Joy Ponder for graduation from the Executive Fire Officer Program; (3) Darlene Barnell for rescuing a small boy from a group of dogs; (4) Amy Patterson for earning the title of Certified Local Government Purchasing Officer; and (5) Robert Griffin, General Services Director, who will soon be retiring.

Mayor Bellamy thanked the employees on what they do on behalf of the City of Asheville and City Council. She was proud of City staff and looked forward to highlighting more accomplishments.

B. STRIVE NOT TO DRIVE PROGRAM

Mayor Bellamy recognized Ms. Claudia Nix who explained the Strive Not To Drive Program. Mayor Bellamy then said that each year Strive Not To Drive recognizes individuals and organizations that help make getting places without driving alone in a car easier. The winners were nominated by their friends, peers, and admirers for their dedication to striving not to drive. The Golden Spoke Award goes to people who make commuting by bike a priority. The Golden Wheel Award goes to people who are multi-modal mixing walking, cycling, and riding the bus to get the places they need to go. We also give a Strive Not To Drive Leadership Award to people who lead by example and make it easier for others to Strive Not To Drive. This year Strive Not To Drive is recognizing two individuals with the Golden Spoke Award: Jarret Porter and Moses Soto; Golden Wheel Award: Derek Daniels; and Strive Not to Drive Leadership Award: Kathy Millar. The Workplace Challenge winners are as follows: winner for business and organizations with fewer than 10 employees – Southwings; the winner for 11-30 employees – Southern Appalachian Highlands Conservancy; the winner for 31-50 employees – REI; the winner for 51 to 251 employees – Evergreen Community Charter School; and the winner for business and organizations over 251 employees – Buncombe County.

II. CONSENT AGENDA:

At the request of Vice-Mayor Manheimer, it was the consensus of Council to add Consent Agenda Item "M" - Resolution encouraging the N.C. Dept. of Environment and Natural Resources and Duke Energy Progress to take expedient and appropriate action to deal with the impact of coal ash leachate at the Duke Energy facility.

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 23, 2013**

- B. RESOLUTION NO. 13-162 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A GENERAL SERVICES AGREEMENT WITH CAVANAUGH & ASSOCIATES, P.A. FOR THE NON-REVENUE WATER MANAGEMENT PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to execute a general services agreement with Cavanaugh & Associates, P.A., for the Non-revenue Water (NRW) Management project for the not-to-exceed amount of \$151,925.

The Water Resources Department has an annual non-revenue water rate of approximately 30-35%. In an effort to reduce this percentage, the department has been working with Will Jernigan at Cavanaugh & Associates, P.A., since January 2013 to provide feedback and guidance on the department's Non-revenue Water (NRW) Program and water audit. Mr. Jernigan is recognized nationally as a leader in Revenue Recovery and Water Auditing and has taught workshops, written technical papers, and helped to pioneer many of the standards adopted by the American Water Works Association (AWWA). More specifically to this project, Mr. Jernigan and other Cavanaugh staff have been participating in NRW team meetings and providing feedback regarding team goals and objectives and water accounting practices.

In April 2013, the scope of Cavanaugh's contract was expanded to include assistance with data collection in anticipation of conducting a Benchmark Water Audit. Water Resources staff need continued guidance over the next 12 months to develop the Benchmark Water Audit based on AWWA methodologies and subsequently, develop a comprehensive NRW Program that will ultimately reduce the department's overall non-revenue water percentage. Water Resources staff are confident that Cavanaugh & Associates is the most qualified firm to assist the department with this project and recommends City Council approval to waive the City's Procurement, Purchasing & Contracting Policy to enter into a general services agreement with Cavanaugh & Associates for a not-to-exceed amount of \$151,925.

The funding needed for this agreement is currently allocated within the Water Resources Operating Fund.

City staff recommends City Council approval of a resolution authorizing the City Manager to execute a general services agreement with Cavanaugh & Associates, P.A., for the Non-revenue Water (NRW) Management project for the not-to-exceed amount of \$151,925.

RESOLUTION BOOK NO. 35 - PAGE 388

- C. RESOLUTION NO. 13-163 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A SPECIAL MAINTENANCE AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO ALLOW PUBLIC PARKING UNDER A SECTION OF WEST ASHEVILLE RIVERLINK BRIDGE IN THE RIVER ARTS DISTRICT**

Summary: The consideration of a resolution authorizing the Mayor to execute a special maintenance agreement between the N.C. Dept. of Transportation and the City of Asheville to allow public parking under a section of bridge # 705 in the River Arts District.

Bridge # 705 is known as the West Asheville Riverlink Bridge and it provides access for SR 3548 (Haywood Road). In addition, it provides a critical connection between downtown Asheville and West Asheville. The area under the bridge between the French Broad River and the Norfolk Southern railroad tracks has been unofficially used for parking purposes for many years and it is currently the primary parking area for the Jean Webb Park. The purpose of the agreement is to make the parking official.

The City and the N.C. Dept. of Transportation have similar agreements at other locations including the public parking under the I-240 bridge adjacent to North Lexington Avenue, the public parking under the US 25 (McDowell Street) bridge adjacent to SR 3556 (Meadow Road), and the public parking adjacent to Cherry Street.

There is no immediate fiscal impact for the subject special maintenance agreement.

Staff recommends that City Council approve a resolution authorizing the Mayor to execute a special maintenance agreement between the N.C. Dept. of Transportation and the City of Asheville to allow public parking under a section of bridge # 705 in the River Arts District.

RESOLUTION BOOK NO. 35 - PAGE 389

D. RESOLUTION NO. 13-164 - RESOLUTION CONVEYING THANKS TO THE MEN AND WOMEN WHO FOUGHT IN THE KOREAN WAR

Mayor Bellamy was pleased to give thanks to these individuals in the past, as well as expressing thanks to them this year.

RESOLUTION BOOK NO. 35 - PAGE 390

E. RESOLUTION NO. 13-165 - RESOLUTION SETTING A PUBLIC HEARING ON AUGUST 27, 2013, FOR A SUBSTANTIAL AMENDMENT TO THE 2013-14 CONSOLIDATED ANNUAL ACTION PLANS FOR CDBG AND HOME TO CONSIDER A SECTION 108 LOAN TO EAGLE MARKET STREETS DEVELOPMENT CORPORATION FOR THE EAGLE MARKET PLACE COMMERCIAL DEVELOPMENT

Summary: The consideration of a resolution setting a public hearing on August 27, 2013, for a substantial amendment to the 2013-2014 Consolidated Annual Actions Plan for CDBG and HOME to consider a Section 108 Loan to Eagle Market Streets Development Corporation for the Eagle Market Place commercial development.

Eagle Market Streets Development Corporation (EMSDC) has requested that the City loan \$718,000 from an existing HUD Section 108 loan for the Eagle Market Place commercial development. This loan was received by the City in 2004 for the purpose of assisting in the financing of a mixed-use development in the Eagle-Market Streets area. EMSDC proposes to rehabilitate and develop approximately 10,000 square feet of commercial rental space in the Del Cardo, Ritz and Dr Collette buildings located on Eagle and Market Streets in downtown Asheville.

The substantial changes to the project funded by HUD in 2003 and the proposal under consideration include:

- Development Partners: EMSDC originally was partnered with the MT Zion Development Corporation, Enterprise Foundation and Historic Acquisitions, Inc. EMSDC is now partnering with Mountain Housing Opportunities.
- Square footage of project by uses: The total leasable building area of 13,000 square feet included five residential units encompassing approximately 3,000 square feet and

approximately 10,000 square feet of commercial space. The current project includes 62 residential units, and 10,000 square feet of commercial space.

- Sources, types and funding levels: The original project's estimated total development cost was \$2,413,514. Sources included the Section 108 loan (\$800,000), Grants, including CDBG and HUD EDI grant funding (\$870,000) and equity of \$743,514. The current commercial-only project estimated total development cost is \$2,351,678, and includes HUD Section 108 funding (\$718,000); NeighborWorks Capital loan (\$1,509,172) and grant or deferred loans of \$124,506.

The proposed amendment uses funds already available through the CDBG program. The program advances CDBG funds to the City. These funds must be repaid to HUD, either from program proceeds or by using future CDBG allocation to the City. The City has been asked by the developer to provide sufficient collateral to allow HUD to approve the release of these funds for the stated purpose.

Staff recommends that Council set a public hearing on August 27, 2013, for consideration of amendments to the 2013-2014 Consolidated Annual Action Plans.

RESOLUTION BOOK NO. 35 - PAGE 391

F. RESOLUTION NO. 13-166 - RESOLUTION APPROVING THE SINGLE SOURCE PURCHASE OF A TREMBLE S6 3" TOTAL STATION ROBOTIC SURVEYING INSTRUMENT FROM DUNCAN-PARNELL GEOMATICS TO INTERACT WITH EXISTING CITY SOFTWARE SYSTEMS

Summary: The consideration of a resolution authorizing the Asheville Public Works Department to purchase the Tremble S6 3" Total Station Robotic Surveying instrument based on single source and standardization parameters.

NC-GS 143-129 (e) allows municipalities to exercise certain exceptions to bidding requirements when a product is only available from a single source supplier or standardization requirements are an overriding factor in said procurement. Both instances apply in the Total Station procurement, specifically: Duncan-Parnell Geomatics is the only supplier of the Tremble unit desired, and its compatibility with existing City software systems is of utmost importance for a seamless implementation and adaption.

The total cost of the unit will be \$42,317.29. Funding for this purchase is included in the FY 2013-14 Public Works Engineering Division operating budget.

City staff recommends City Council adopt a resolution authorizing the Public Works Department to purchase the Tremble S6 3" Total Station Robotic Surveying Instrument based on single source and standardization exemptions.

RESOLUTION BOOK NO. 35 - PAGE 392

G. RESOLUTION NO. 13-167 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AUTOMATIC AID SERVICE AGREEMENT WITH THE REEMS CREEK FIRE DEPARTMENT FOR AUTOMATIC AID RESPONSE

Summary: The consideration of a resolution authorizing the Mayor to sign an automatic aid service agreement in the amount of \$82,655.25 with the Reems Creek Fire Department for automatic aid response.

City Council approved in the FY 2013/2014 adopted budget funding to continue an automatic aid service agreement with the Reems Creek Fire and Rescue Department. This agreement has been in place since 2007 and provides for automatic response by the Reems

Creek Fire and Rescue Department to emergency incidents to locations in the Beaverdam Valley that benefit the City of Asheville. This service agreement provides for a stronger standard of cover in this area.

Staff recommends that City Council adopt a resolution authorizing the Mayor to sign an automatic aid agreement in the amount of \$82,655.25, with the Reems Creek Fire and Rescue Department.

RESOLUTION BOOK NO. 35 - PAGE 393

H. RESOLUTION NO. 13-168 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE TWO CONSTRUCTION CONTRACTS WITH BUCHANAN & SONS INC. FOR SPOOKS BRANCH ROAD REPAIRS AND YOUNG & MCQUEEN FOR SUNSET DRIVE & SKYVIEW PLACE

Interim City Attorney McGlohon provided Council with a revised resolution that removes reference to the City using the emergency provision in awarding the contracts.

Summary: The consideration of a resolution authorizing the City Manager to execute construction contracts for immediate repairs to the City's rights-of-way with Buchanan & Sons, Inc. for Spooks Branch Road; and Young & McQueen for Sunset Drive & Skyview Place.

From January 1, 2013 to July 8, 2013, the Asheville area received 41.67 inches of rainfall, exceeding the City's normal annual rainfall for the same time period by 4.68 inches. More specifically, on July 3, 2013, 3.48 inches of rain fell in downtown Asheville. On July 4, 2013, another 1.48 inches of rain fell in the Asheville area, culminating in almost 5 inches of rain within a 24 hour period. As the rain continued to fall, rights of way located throughout the City but, primarily in the City's higher elevations, experienced severe stress. Stormwater runoff rapidly undermined steep soil banks, causing huge chunks of asphalt/pavement of the shoulder of many City roads to crumble as the underlying soil gave in to the pressure of the velocity of the water flow. City work forces immediately commenced repairs, to preserve health, safety and property. The larger and more complicated slides however, exceeded the City's ability to handle with in-house work force. Fearing an imminent collapse of City roads where the larger slides were situated, City staff rapidly assembled a team of experienced, trained and capable area contractors. The team of contractors accompanied City staff to inspect each site. The magnitude of the elevation, depth and width of the slides made it apparent that a temporary fix to protect health, safety and property was inextricably tied to a permanent remedy. At least two of the sites required an evaluation and assessment by a structural engineer. Those two sites are not a part of this report. Based upon City staff knowledge and the comments/concerns from the contractors, a bid document was quickly prepared; requesting bids to rapidly, efficiently and effectively remedy the threat to life, health and property. The bid document was forwarded to the area contractors. The City received several responses to the bid, all of which were in an amount under the \$500,000 formal bidding threshold of NCGS §143-129.

The City's Contracting and Procurement Policy requires that all construction contracts in excess of \$100,000, perceive prior approval by City Council. City staff awarded the informal contracts to the following entities: Buchanan & Sons, Inc. of Whittier NC, for Spooks Branch Road repairs for \$267,674, and Young & McQueen of Burnsville NC, for Sunset Drive & Skyview place for \$425,450 contingencies, based primarily upon lowest responsible, responsive bids, availability to mobilize, bonding capacity and previous performance on similar projects.

Pros:

- Repair vulnerable roadway sections damaged by heavy rainfall.
- Improve City infrastructure.
- Allow for the impacted communities to return to normal as soon as possible.
- Minimize potentially dangerous situations near slides areas.

- Minimize environmental impacts near slide areas.

Cons:

- Use of City funds allocated for other improvements.
- Will consume staff time previously scheduled for other infrastructure projects.

The total amount of these two contracts including a 15-20% contingency was \$812,000. Funding for these contracts came from the existing FY 2013-14 Streets & Sidewalks budget that was approved by City Council in June. Staff will be reporting back to the Finance Committee and City Council on the potential fiscal impact of all of the landslides once more definitive cost estimates are known for the other landslide repairs.

City staff recommends City Council ratify and approve the execution of construction contracts with Buchanan & Sons, Inc. of Whittier NC, for Spooks Branch Road repairs for \$267,674, and Young & McQueen of Burnsville, NC, for Sunset Drive & Skyview Place for \$425,450, within the provisions of N.C.G.S. §143-131, and as being consistent with and not in abrogation with the provisions of the City's Contracting and Purchasing policy.

RESOLUTION BOOK NO. 35 - PAGE 394

I. ORDINANCE NO. 4220 - BUDGET AMENDMENT TO MOVE THE FISCAL YEAR 2013 COMPUTER REPLACEMENT BUDGET FROM THE GENERAL FUND TO THE GENERAL CAPITAL PROJECTS FUND AND INCLUDE FUNDING FROM THE REPLACEMENT OF ADDITIONAL POLICE DEPARTMENT COMPUTERS

Summary: The consideration of a technical budget amendment in the amount of \$405,000 to move the Fiscal Year 2013-14 computer replacement budget from the General Fund to the General Capital Projects Fund and include funding for the replacement of additional police department computers.

As a part of the FY 2013-14 Adopted General Fund Budget, City Council approved a \$350,000 budget for the replacement of computers and associated equipment, with funding for the purchases coming from the issuance of debt proceeds. Since these purchases will be funded with debt proceeds, staff is recommending that the budget for PC replacement be moved out of the General Fund and into the General Capital Projects Fund, which is a multi-year fund that is more appropriately designed for these types of transactions. Consistent with Council's Financial Policies, the term for debt issued to finance capital does not exceed the expected useful life of the equipment purchased. Computers are typically financed for a period of 48 months. In addition, staff has refined the estimate for funding needed for FY 2013-14 to \$405,000, which includes the additional replacement of Police Department computers.

This technical budget amendment moves the budget from one fund to another which has no overall fiscal impact to City. The increase in the overall purchase budget from \$350,000 to \$405,000, will increase the annual debt payment on this purchase by approximately \$5,000.

City staff recommends City Council adopt the technical budget amendment in the amount of \$405,000 to move the Fiscal Year 2013-14 computer replacement budget from the General Fund to the General Capital Projects Fund.

At the request of Mayor Bellamy, it was the consensus of Council to have Interim City Attorney McGlohn provide a status report and plan to digitalize their legal files.

ORDINANCE BOOK NO. 28 - PAGE 302

J. RESOLUTION NO. 13-169 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A FEDERAL AVIATION ADMINISTRATION GRANT FOR THE GREATER ASHEVILLE REGIONAL AIRPORT FOR A NEW AIRCRAFT RESCUE FIRE FIGHTING FACILITY

Summary: The consideration of a resolution authorizing the Mayor to approve a Grant Offer from the Federal Aviation Administration (FAA) in the amount of \$2,562,954.

The FAA has offered a grant agreement to the Greater Asheville Regional Airport. This grant, in the amount of \$2,562,954, is for a new Aircraft Rescue Fire Fighting Facility.

Staff recommends adoption of the resolution authorizing the Mayor to execute the grant agreement for Project No. 3-37-0005-042-2013.

RESOLUTION BOOK NO. 35 - PAGE 396

K. RESOLUTION NO. 13-170 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH MOTOROLA, INC. TO PROVIDE MAINTENANCE COVERAGE FOR THE CITY'S RADIO SYSTEM FROM AUGUST 1, 2013 - JULY 31, 2014

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, 2013 through July 31, 2014 has remained the same as last year's cost. Funding for this contract was appropriated in the FY 13/14 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.

One hundred and forty-seven thousand, one hundred and sixty four dollars was appropriated in the City of Asheville's Fiscal Year 2014 operations budget for the purpose of maintaining the City of Asheville's public radio system on a 24x7 basis. This action has no impact on the fund balance in the General Fund.

City staff recommends the adoption of the resolution for radio maintenance coverage for the term of August 1, 2013 through July 31, 2014.

RESOLUTION BOOK NO. 35 - PAGE 397

L. RESOLUTION NO. 13-172 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT 0.02 ACRES OF REAL PROPERTY FROM BUNCOMBE COUNTY AT 70 W. CHAPEL ROAD, ALSO KNOWN AS RAY KISIAH PARK

Summary: The consideration of a resolution authorizing the Mayor to accept a transfer of 0.02 acres of real property from Buncombe County at 70 West Chapel Road.

Per Resolution No. 13-115, the City transferred 2.8 acres of land at 70 West Chapel Road to Buncombe County, whose intent was to combine the land with adjacent property to assemble the parcels needed for future GE Aviation manufacturing plant. During the course of title examination for this property, Buncombe County discovered a 2 foot strip of land separating the GE site and the City property, running the length of the entire shared boundary line of

approximately 800 feet. This strip of land has now been acquired by Buncombe County in order to resolve any issues with combining the parcels of land.

In practical terms, Buncombe County has resolved the issue of the 2 foot strip that stood between the 2.8 acre parcel and the GE site, but now has no additional interest in retaining the remainder of the 2 foot strip area that continues along the City's property boundary. The County has offered to convey this remnant area, measuring 2 feet by 376 feet (approx. 0.02 acres), to the City of Asheville.

Given the size and shape of the area, any additional maintenance costs will be absorbed into the existing budget for the maintenance of Ray Kisiah Park. No legal fees or deed preparation fees for this transfer.

City staff recommends that City Council adopt the resolution authorizing the Mayor to accept a transfer of 0.02 acres real property at 70 West Chapel Road from Buncombe County.

RESOLUTION BOOK NO. 35 - PAGE 399

M. RESOLUTION NO. 13-174 - RESOLUTION ENCOURAGING THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES AND DUKE ENERGY PROGRESS TO TAKE EXPEDIENT AND APPROPRIATE ACTION TO DEAL WITH THE IMPACT OF COAL ASH LEACHATE AT THE DUKE ENERGY FACILITY

Summary: The N.C. Dept. of Environment and Natural Resources (DENR), Division of Water Quality, and Duke Energy Progress, Inc. have entered into a Draft Consent Order upon which public comment is being received until August 14, 2013. This resolution represents the public comment of the governing body of the City of Asheville on behalf of the citizens of Asheville.

DENR sued Duke Energy Progress, Inc. for unpermitted discharges, connected with its steam electric generating plant in Asheville, NC. The discharge is known as coal ash, a black, powdery material that is sluiced into holding ponds. DENR and Duke Energy have negotiated a draft Consent Order as some of the coal ash has been allowed to seep into the French Broad River. Coal ash is generated as a byproduct at the Duke Energy facility.

The Consent Order calls for additional monitoring at the site to determine the level of contamination as well as defining the best method for remediation. As part of this draft order, DENR is accepting public comment.

This action complies with one of Council's Strategic Goals by supporting safety and quality of life.

Pros

- Encourages DENR to expedite the monitoring and evaluation of the impact of coal ash leachate into the French Broad River.
- Request that if contamination is discovered above acceptable levels that Duke Energy will act quickly to remediate the site.

Cons

- None

Staff recommends that City Council consider the resolution.

In response to Councilman Davis, who noted that this is a short-term step by adding our voice regarding coal ash ponds, but that we will look for a longer-term solution, Mayor Bellamy agreed and noted that Duke Energy Progress is a partner of the City and they recognize that we want them to look at this issue. She said this is an important issue and this is a balanced approach.

RESOLUTION BOOK NO. 35 - PAGE 403

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 Pelly and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. HOMELESS INITIATIVE ADVISORY COMMITTEE UPDATE

Mr. David Nash, Chair of the Homeless Initiative Advisory Committee, and Homeless Initiative Coordinator Heather Dillashaw, briefed Council on their activities of the past year and goals for the upcoming year.

After comments, on behalf of City Council, Mayor Bellamy thanked Mr. Nash for his leadership and the entire Committee for their dedication and outreach in the community. She also thanked Ms. Dillashaw for her work in this very important area of the City.

B. STORMWATER INFRASTRUCTURE

Assistant City Manager Cathy Ball said that the purpose of this report is to provide City Council with the systematic approach for addressing storm water management, particularly on steep slopes.

As you are aware, this year we have had record rainfall events. These events have resulted in numerous slides and failures of road ways in steep slope areas. Repairing these failures will be a significant expense to the city.

In an effort to address our vulnerability in these areas, with the anticipation of continued high rainfall events, staff would like to develop a strategy to reduce damage associated with these occurrences.

The action plan would include those short and long term strategies. The plan would include the following: (1) coordinate with local experts to target specific areas that are more vulnerable to slides and roadway failures; (2) hold community meetings in these areas to get feedback from residents on their concerns; and (3) develop both short and long-term strategies to address vulnerabilities associated with storm water run-off on steep slopes, including but not limited to; increasing ditch maintenance, performing systematic analysis of watersheds for more detailed improvements, and reviewing our current ordinances related to development in steep slope areas.

Our community is fortunate to have the National Climactic Data Center in Asheville along with other experts in structural and geotechnical soil stabilization. We will call upon these experts for support and assistance in developing recommendations to address these issues.

Our implementation schedule would be to proceed with Council approval in developing an evaluation team. The public would be invited to community meetings to discuss their concerns. Staff would expect to bring recommendations before Council during the next budget cycle.

Pros:

- Provides a community-wide systematic approach to reducing damage from significant rain events.
- Provides strategic planning for climate adaptation change.
- Provides both short and long-term strategies for addressing slope stabilization.

Con:

- The process will require substantial staff resources.

Minimal Fiscal Year 2014 budget impact is anticipated and will be funded through existing appropriations. The financial impacts are unknown at this time but will be provided to council during the FY 15 budget process. Staff will be looking for low cost solutions and revenue enhancements, inasmuch as they are available and appropriate, to solve the problems.

Staff requests that City Council direct the City Manager to proceed with the recommended evaluation.

After discussion, it was the consensus of Council to have City Manager Jackson proceed with the recommended evaluation which includes developing a systematic plan for upgrading stormwater maintenance and provide at the Council annual retreat or initial budget planning session.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO A SUBSTANTIAL AMENDMENT TO THE 2013-14 ACTION PLAN TO MAKE FINAL ALLOCATION OF COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME FUNDS

RESOLUTION NO. 13-173 - RESOLUTION MAKING A SUBSTANTIAL AMENDMENT TO THE 2013-14 ACTION PLAN TO MAKE FINAL ALLOCATION OF COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME FUNDS

Community Development Director Jeff Staudinger said that this is consideration of a resolution for a substantial amendment to the 2013-14 Action Plan to make final allocation of Community Development Block Grant and HOME funds. This public hearing was advertised on August 2 and 9, 2013.

The final revised grants of HUD funds for CDBG and HOME have been received. The revised CDBG grant available for the current year is \$993,543. Our projected allocation was \$825,773. The revised HOME grant is \$938,716; the projected grant was \$848,276. To determine the total available in each program, income received and not reallocated during prior years and funds returned from funded projects that did not move forward are added to the new grants from HUD. The City has a total available \$1,224,156 in CDBG funds and \$1,484,403 in HOME funds in the fiscal year beginning July 1, 2013. The City's Housing and Community Development Committee has made recommendations for the use of CDBG funds, which must be used in housing or community development programs in Asheville, and the Asheville Regional Housing Consortium has recommended uses for the HOME funds, which must be used for housing programs within the four-county Consortium area (Buncombe, Henderson, Madison, and Transylvania counties). A total of 19 CDBG and 12 HOME programs are recommended for

funding. Allocations are consistent with the proposed Strategic Housing & Community Plan for 2010-2015.

Pros:

- Approval of the Action Plan paves the way for the receipts of \$2,708,559 of HUD funding to the City and region, which will be used to create affordable housing, create jobs, and improve public infrastructure.
- HUD funding will leverage \$25,000,000 of additional funding for these projects.
- Reflects the carefully considered recommendations of the City's Housing & Community Development Committee and the Asheville Regional Housing Consortium.

Con:

- It is not possible to fund all the applications received, and most of those funded will receive less than the amount requested.

The Action Plan is fully funded from federal CDBG & HOME entitlement grants, unused funds from previous completed projects, and estimated program income. Staff costs to administer the program are also fully paid from federal sources. The funded programs will provide new construction and other economic activity in the City and region, creating and sustaining employment.

The Housing and Community Development Committee and the Asheville Regional Housing Consortium recommend approval of (1) a resolution authorizing an amendment of the City's Consolidated Annual Action Plan for 2013-14.; and (2) at the next formal Council meeting a budget amendment, in the amount of \$128, due to a funding reduction from HUD.

Mayor Bellamy opened the public hearing at 6:00 p.m., and when no one spoke, she closed the public hearing at 6:00 p.m.

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

Councilman Davis moved for the adoption of Resolution No. 13-173. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 35 – PAGE 400

B. PUBLIC HEARING TO CONSIDER REZONING PROPERTY WITH MULTIPLE ADDRESSES ON FINALEE AVENUE FROM INSTITUTIONAL DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 4221 - ORDINANCE TO REZONE PROPERTY WITH MULTIPLE ADDRESSES ON FINALEE AVENUE FROM INSTITUTIONAL DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone property with multiple addresses on Finalee Avenue from Institutional District to RS-8 Residential Single-Family High Density District. This public hearing was advertised on August 2 and 9, 2013.

Mr. Esselstyn said that the subject site, roughly 1.4 acres of heavily wooded, steeply sloped land, has been involved in multiple zoning actions and development proposals in recent years, as described in the above section. While the high-density multi-family development proposals met technical requirements, there was consternation on the part of City Council, as well as multiple neighboring citizens, about the compatibility of that type of use in this location.

The current zoning designation, Institutional, can be traced back to circumstances years ago, when this property was under the same ownership as the complex to the northeast (now the Kenilworth Apartments), which at the time was a medical institution. The subject property, which may have at that time shared a PIN with the parcel on which the complex was built, was considered part of the institution's campus. When the building was converted to apartments, the existing zoning district allowed high density multi-family residential uses, and it was preserved.

Staff feels (as was reflected in the 2011 staff-initiated rezoning) that the proposed zoning reflects a density more appropriate for these steeply sloped properties in a predominately single-family residential neighborhood, and eliminates the potential for certain commercial uses (allowed in the Institutional district) that are unlikely to be compatible at this location.

The site has already been subdivided into lots suitable for single-family development, and the Institutional Zoning District allows single-family uses, but the side setbacks in Institutional are more restrictive than in RS-8. While the single family lots exceed the minimum lot size for the RS-8 district, width is at a premium because of the steep drop-off, and the difference between the ten-foot side setback in Institutional and the six-foot setback in RS-8 was one factor prompting the applicant to request the rezoning.

As recently as May of this year, the subject area was within a single 3.17-acre parcel. The rezoning application was submitted after the subdivision of the parcels along Finalee had been recorded, but before new PINs were assigned, so the original application referenced the "parent" PIN of out of which the nine house lots were divided. The application didn't specify that the southern area was meant to be omitted, so the rezoning was originally analyzed and advertised as including the 1.74-acre remnant parcel to the south. After learning of the applicant's wish to solely petition for the rezoning of the nine smaller lots, staff explained the change before the Planning and Zoning Commission, and the petition now being considered concerns only the smaller 1.4-acre area.

At their July 18, 2013, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning petition. Two residents spoke in favor of the rezoning, which, in addition to one request for information, constitute the extent of communications received from the public regarding this item. Both the neighboring citizens and two Commissioners indicated that, their support notwithstanding, they would prefer that the rezoning include a larger area of the Institutional zoning district.

The UDO (7-8-15) states that "The Institutional District is established to reserve land for the development of major educational facilities, major medical facilities and other complementary and supporting uses such as health related developments, office developments, and public services." Staff feels the land no longer is appropriate for this purpose.

By contrast, the stated intent of RS-8 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."

When a similar rezoning proposal was initiated by staff in 2011, the primary reason cited for objection on the part of reviewing boards was the lack of support of the property owner. Now that that situation has changed, the property has been subdivided, and the property owner is behind the rezoning, staff feels that the argument for the rezoning is further strengthened.

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

Pro:

- The rezoning establishes zoning on the properties that is more reflective of and compatible with the surrounding single-family neighborhood, the steeply sloping site, and the limited access.

Con:

- None noted.

Staff's analysis indicates that the proposed zoning district would support appropriate development and prevent incompatible development better than the existing zoning, and, accordingly, staff recommends approval.

Mayor Bellamy opened the public hearing at 6:03 p.m.

Mr. Kevin Scarmack, representing the property owner, said that their goal is to fit these lots into more of the character of the Kenilworth neighborhood, and asked for Council's support of these rezonings.

Ms. Teddy Jordan, President of the Kenilworth Residents Association, supported the rezoning and felt that single-family zoning is more compatible with the neighborhood. They continue to have concerns with remaining large tracts of land that have institutional zoning.

Ms. Valeria Hoh, resident on Finalee Avenue, supported the rezoning but hoped that City Council will take steps to zone the other large tracts that are zoned Institutional District.

Mayor Bellamy closed the public hearing at 6:08 p.m.

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

Vice-Mayor Manheimer 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. 4221. This motion was seconded by Councilman Smith and carried unanimously.

ORDINANCE BOOK NO. 28 – PAGE 304

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 13-171 - RESOLUTION REMOVING CITY MANAGEMENT DISCRETION TO ALLOW ALCOHOL AT SPECIAL EVENTS OF 1,000 OR MORE ATTENDEES IN CITY PARKS ZONED MEDIUM TO HIGH DENSITY MULTI-FAMILY RESIDENTIAL WHERE THE EVENT BOUNDARY IS WITHIN 100 FT. OF ANY RESIDENTIAL DWELLING UNIT

Associate City Attorney Jannice Ashley said that this is the consideration of a resolution to remove City management discretion to allow alcohol at Special Events of 1,000 or more attendees in any City Park that is zoned medium to high density multi-family residential (i.e., RM-8 or RM-16) and where the event boundary is within 100 ft. of any residential dwelling unit.

This action is in response to concerns raised at the July 23rd City Council meeting by members of the community surrounding Martin Luther King, Jr. Park in regard to the negative impacts of the Brewgrass Festival, a large (4,000+) special event, where alcohol has been permitted, that has been held in this residentially zoned park for several years. Neighborhood residents stated that negative impacts have included: drunken attendees defacing/disturbing

adjacent residential dwellings, excessive trash, traffic, and unruly crowds. Because of the negative experience with Brewgrass, the community sought assurance from City Council that such events, or similar type events, would not be allowed to occur at MLK, Jr. Park in the future.

In considering special events at neighborhood parks, several criteria factor into the likelihood of impact: size of the event; permitted sale/consumption of alcohol; zoning of City park where event is located; and proximity of event boundary to residential units. Most City parks where large (i.e. 1,000+) special events can be accommodated, and have been permitted, are not residentially zoned (i.e. Carrier Park zoned River; Memorial Stadium zoned Institutional; Pack Square Park zoned CBD). MLK, Jr. Park, however, is zoned RM-8 or medium-density multi-family residential, increasing the likelihood of negative and substantial impact. Therefore, in order to address the concerns raised by residents in the vicinity of MLK Jr. Park, and to mitigate future issues of a similar nature, the drafting of a resolution focused on the aforementioned criteria, appeared to be the most reasonable way to approach this task. The proposed resolution will not allow City management to exercise discretion in allowing certain special events in City parks meeting certain conditions.

Pro:

- MLK Jr. Park cannot be used for special events of 1,000+ where alcohol is allowed.

Con:

- None Known

No fiscal impact is anticipated. There are other, more appropriately zoned city parks/sites which can accommodate large special events where alcohol sale/consumption could be permitted.

City staff recommends City Council adopt a resolution removing City management discretion to allow alcohol at special events of 1,000 or more attendees, in City parks zoned medium to high density multi-family residential, where the event boundary is within 100 ft. of any residential dwelling unit.

In response to Councilman Bothwell, Interim City Attorney McGlohon said that she understood that the neighbors were concerned about the size of the event, but they also concerned about the sale of alcohol. Therefore, staff tailored the resolution as such, without specifically singling out MLK Park.

Ms. Carmen Ramos-Kennedy said that the neighborhood is concerned with the number of people at the event and the sale of alcohol.

Mr. Jonathan Wainscott was disappointed that the neighborhood's concerns have not been heard by City Council for over a year. In addition, he understood that the City has a policy that prohibits festivals and festival-related activities on ballfields; therefore, they have an existing policy that should be enforced.

Mr. Mike Rangel, representing the Asheville Brewers Alliance, supported the Brewgrass Festival and urged Council to come up with an alternative that will help this festival.

Ms. Renee White, President of the East End/Valley Street Neighborhood Association, stated that they are not against the Brewgrass Festival - they just want it removed from their neighborhood community.

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

Councilman Pelly spoke felt it was important for festival organizers to communicate early with neighborhood representatives.

It was the consensus of Council, at the request of Mayor Bellamy, for the City Manager to investigate the location of McCormick Field (instead of Memorial Stadium) for future Brewgrass Festival locations.

Councilman Smith moved for the adoption of Resolution No. 13-174. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

RESOLUTION BOOK NO. 35 – PAGE 398

VI. NEW BUSINESS:

A. BOARDS & COMMISSIONS

Vice-Mayor Manheimer reported that the Boards & Commissions Committee met for the second time with representatives of the community wishing to form the African American Heritage Committee. It was the consensus of the Committee, with City Council concurrence, to instruct Interim City Attorney McGlohon to prepare an enabling resolution or ordinance forming the new committee, noting that said Committee will be a joint committee with Buncombe County.

Regarding the Affordable Housing Advisory Committee, the following individuals applied for the vacancies: Robin Raines, Brandee Boggs and Dawn Nelson. Councilman Bothwell moved to (1) reappoint Barber Melton, Scott Dedman and Lindsey Simerly; and (2) interview Robin Raines. This motion was seconded by Councilman Smith and carried unanimously.

Regarding the Americans with Disabilities Act Compliance Committee, the term of William Madison (representing the disabled community) will expire on August 22, 2013. No one applied for the vacancy. Because the Committee has had no need to meet since its existence, it was the recommendation of the Boards & Commissions Committee and the consensus of City Council that (1) the representative of the disabled community seat remain in an "inactive" status; and (2) the Committee remain in existence. In the event that a hearing is required, or the Committee is required to transact other business, the Committee members will be contacted by the Secretary to the Committee, and if necessary, applications for vacancies will be taken.

Regarding the CrimeStoppers Board of Directors, the following individuals applied for the vacancy: Anthony Mitchell and Fred Cooke. It was the consensus of the Boards & Commissions Committee, and consensus of City Council to interview Mr. Mitchell and Mr. Cooke.

Regarding the Buncombe County Tourism Development Authority, the following individuals have applied for this vacancy: John McKibbon, Pratik Bhakta and John Winkenwerder. It was the recommendation of the Boards & Commissions Committee, and consensus of City Council, to postpone action until September 10, 2013.

Regarding City Council's appointment of the Chair of the Civil Service Board, Councilman Hunt, liaison to the Civil Service Board, explained that there was an error in Council's appointment of Mr. Marvin Rosen, as City Council mistakenly appointed Mr. Rosen beyond his term of office - Mr. Rosen is appointed by the four seated members. Therefore, with the approval of the Civil Service Board, it was the consensus of City Council to proceed with a resolution amendment on August 27, 2013, and develop a functional path moving forward.

RESOLUTION NO. 13-175 - RESOLUTION APPOINTING MEMBERS TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the River District Design Review Committee.

The terms of Terry Meek (at large member), Darren Green (owner of property in River District), Esther Cartwright (member of RiverLink Board of Directors), Marty Black (owner of property in River District), Richard Hall (member of RiverLink Board of Directors) and Carleton Collins (design professional) expire on September 1, 2013.

The following individual has applied for the vacancies: Marty Weil.

Councilman Hunt moved to reappoint Darren Green (owner of property in River District), Esther Cartwright (member of RiverLink Board of Directors), Richard Hall (member of RiverLink Board of Directors) and Carleton Collins (design professional) to each serve an additional three-year term, terms to expire September 1, 2016, or until their successors have been appointed; and (2) re-advertise. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 35 - PAGE 405

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Timothy Sadler (1) believed the City should consider filing extortion charges against Rep. Tim Moffitt regarding comments he made regarding the Cultural Park Authority and the Water Lawsuit; and (2) asked for Council to consider the less expensive option of providing Sunday bus service.

Councilman Pelly invited the public to participate in the first Asheville Festival of Neighborhoods on Sunday, October 27, 2013, at 3:00 p.m. in the Wilma Sherrill Center at UNC-Asheville. The purpose of the Festival is to honor and recognize successful neighborhood collaborations and the leaders who make them possible.

Closed Session

At 7:09 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) 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 statutory authorization is contained in N.C.G.S. 143-318.11(a)(1); (2) 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; Metropolitan Sewerage District of Buncombe County; City of Asheville; W&K Hotels, LLC d/b/a Four Points By Sheraton; Hospitality Lodging Investors, II, LP d/b/a Hotel Indigo; Nesbitt Asheville Venture, LLC d/b/a The Renaissance Hotel; City Council of the City of Asheville; and McKibbin Hotel Group, Inc. The statutory authorization is N. C. Gen. Stat. 143-318.11(a)(3); and (3) 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 authorization is contained in G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 8:10 p.m., Councilman Smith moved to come out of closed session. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:10 p.m.

CITY CLERK

MAYOR