

Mayor Patrick L. McCrory Mayor Pro Tem Susan Burgess

Michael D. Barnes
Nancy Carter
Warren Cooksey
Andy Dulin
Anthony Foxx

Patsy Kinsey
John Lassiter
James Mitchell, Jr.
Edwin Peacock III
Warren Turner

CITY COUNCIL MEETING
Monday, February 9, 2009

In addition to the previously advertised public hearing items, Key Businesses have asked that the time sensitive items listed below not be deferred.

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| 22 | 21 | Fred D. Alexander Boulevard Project Condemnation Settlement Additional Compensation |

CITY COUNCIL AGENDA
Monday, February 9, 2009

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5:00 P.M. DINNER BRIEFING CONFERENCE CENTER

1. Mayor & Council Consent Item Questions

Resource: Curt Walton, City Manager

Time: 5 minutes

Synopsis

- Mayor and Council may ask questions about Consent I and Consent II agenda items. Staff will address as many questions as possible at the end of the dinner meeting.

2. Environment Committee Recommendations on Utilities Revenue Stabilization

Resource: Doug Bean, Utilities

Time: 20 minutes

Synopsis

- As a result of last year's drought, significant water use reductions led to a large rate increase to offset the lost Utilities revenues.
- City Council expressed concern over the volatility of Utilities revenues and recommendations were made in the City Manager's May 21, 2008 Utilities Review to:
 - Confirm the policy on annexation
 - Consider how to provide for revenue stability in drastic weather conditions
 - Review Capital Investment Plan (CIP) policies
- The annexation policy was affirmed by Council with the adoption of the FY2009 annexation ordinance. Revenue stability and CIP policies were referred to the Environment Committee.
- The Environment Committee reviewed four revenue stability options. The Committee unanimously recommends:
 - Establishment of financial goals to create rate equalization funds
 - Development of a drought surcharge

Council Action

- If City Council concurs with the Environment Committee recommendations, staff will develop a drought surcharge ordinance for Council's consideration within six months.

Attachment 1

Summary of Utilities Revenue Stabilization Review

3. Street Car Update: Cost, Economic Impact and Potential Financing

Resources: David Carol, Transit
Peter Zeiler, Economic Development
Ron Golem, Bay Area Economics

Time: 30 minutes

Synopsis

- A study of the economic impacts and financial feasibility of accelerating the Streetcar project has been completed, along with an update of the project's cost estimate.
- Staff will review the basis, methodology and outcome of updating the cost estimate.
- Bay Area Economics will present the findings on the projected economic benefit, case studies from other cities, and potential capital amounts that could be raised through some value capture models.

Council Action

- If the City Council wishes to proceed, staff will outline a recommended process and schedule for further consideration of the project.

4. Proposed Newsrack Ordinance

Resources: Michael Smith, Charlotte Center City Partners
Bob Hagemann, City Attorney's Office

Time: 20 minutes

Synopsis

- For several years now, Charlotte Center City Partners has been working on a proposal to address the proliferation of newsracks on City sidewalks. This effort has been undertaken in consultation with City staff and the newspaper and publication industry.
- At this time, Charlotte Center City Partners and the City staff wish to share with City Council a draft Newsrack Ordinance and introduce program elements, which include:
 - Program based background and goals
 - Proposed Newsrack Ordinance
 - Proposed Modular Newsrack Program
 - Process and schedule

Future Action

City Council will be asked to approve the ordinance at their February 23, 2009 meeting.

5. Answers to Mayor & Council Consent Item Questions

Resource: Curt Walton, City Manager

Time: 10 minutes

Synopsis

- Staff response to questions from the beginning of the dinner meeting.

7:00 P.M. AWARDS AND RECOGNITIONS MEETING CHAMBER

CONSENT

- 6. Consent agenda items 16 through 24 may be considered in one motion except those items removed by a Council member. Items are removed by notifying the City Clerk before the meeting.**

PUBLIC HEARING

7. Public Hearing on a Resolution to Close Allen A. Brown Road

Action: A. Conduct a public hearing to close Allen A. Brown Road, and
B. Adopt a resolution to close.

Staff Resource: Linda Poissant, Transportation

Policy

To abandon right-of-way that is no longer needed for public use

Explanation

- North Carolina General Statute 160A-299 outlines the procedures for permanently closing streets and alleys.
- The Charlotte Department of Transportation received a petition to abandon public right-of-way and requests this Council action in accordance with the statute.
- The action removes land from public right-of-way status and attaches it to the adjacent property.

Petitioner

Young's Pond, LLC/ Clay McCullough

Right-of-Way to be abandoned

Allen A. Brown Road

Location

Located within the Mallard Creek Community beginning from Brown Road continuing approximately 1,200 feet west to its terminus

Reason

To incorporate the right-of-way into adjacent property owned by the petitioner in affiliation with an approved new subdivision project called Meridale Phase I. Allen A. Brown Road will be realigned as part of this new development.

Notification

In accordance with City Policy, the Charlotte Department of Transportation sent abandonment petitions to adjoining property owners, neighborhood associations, private utility companies and City departments for review.

Adjoining Property Owners

Mrs. Belinda Foster- No objection

Neighborhood/Business Associations

Brookstone Homeowners Association- No objection

Colvard Park Homeowners Association- No objection

Devonshire Neighborhood Association- No objection

Eastfield Ridge- No objection

Hampton Palce Property Owner's Association- No objection

Harris Pointe Homeowners Association- No objection
 Madison Park at Wallace Farms- No objection
 Mallard Grove Homeowners Association- No objection
 Mapleton Homeowners Association- No objection
 Norcroft/Sweetwater Homeowners Association- No objection
 Northeast Coalition of Neighborhoods- No objection
 Prosperity Region Area Management (PRAM) - No objection
 Radbourne (Homeowners Association) - No objection
 Spring Park- No objection
 Wellington Homeowners Association- No objection
 Winchester Organization- No objection

Private Utility Companies – No objection

City Departments

Review by City departments identified no apparent reason this closing would:

- Be contrary to the public interest
- Deprive any individual(s) owning property in the vicinity of reasonable means of ingress and egress to his property as outlined in the statutes

Attachment 2

Map
 Resolution

8. Public Hearing on a Resolution to Close a Residual Portion of Right-of-way Abutting E. Independence Boulevard

Action: **A. Conduct a public hearing to close a residual portion of right-of-way abutting E. Independence Boulevard, and**

 B. Adopt a resolution to close.

Staff Resource: Linda Poissant, Transportation

Policy:

To abandon right-of-way that is no longer needed for public use

Explanation

- North Carolina General Statute 160A-299 outlines the procedures for permanently closing streets and alleys.
- The Charlotte Department of Transportation received a petition to abandon public right-of-way and requests this Council action in accordance with the statute.
- The action removes land from public right-of-way status and attaches it to the adjacent property.

Background

- The Charlotte Department of Transportation received a petition to abandon residual NCDOT right-of-way abutting E. Independence on March 10, 2008.
- At the time it acquired the subject right-of-way, NCDOT contractually promised to return any residual right-of-way to the property owner. Due

to a technical provision in State law, the return of the residual right-of-way can only be accomplished through the City's abandonment process.

- Refusing to abandon this portion of right-of-way may put the State (NCDOT) in breach of contract.
- The City of Charlotte has no legal interest in this portion of right-of-way and cannot reserve the right to use it in the future.

Petitioner

Burt Family Limited Partnership/ Ralph L. Burt, Jr.

Right-of-Way to be abandoned

A residual portion of right-of-way abutting E. Independence Boulevard

Location

Located within the Elizabeth Community beginning at Lamar Avenue continuing approximately 377 feet eastwardly to its terminus

Reason

To incorporate right-of-way into adjacent parcels owned by the petitioner for future sale and development

Notification

In accordance with City Policy, the Charlotte Department of Transportation sent abandonment petitions to adjoining property owners, neighborhood associations, private utility companies and City departments for review.

Adjoining Property Owners - None

Neighborhood/Business Associations

- Elizabeth Community Association - No objections
- Christmas Everyday Outreach - No objections
- Commonwealth Morningside Neighborhood Association - No objections
- Commonwealth Park - No objections
- Belmont Neighborhood Strategy Force - No objections
- Plaza Central Partners - No objections
- Commonwealth Park - No objections
- Dwyer Solutions - No objections
- Plaza Midwood Neighborhood Associations - No objections
- Belmont Tenant Organization - No objections
- Belmont Community - No objections
- Briar Creek-Commonwealth - No objections
- Chantilly Neighborhood Association - No objections

Private Utility Companies – No objections

City Departments

Review by City departments identified no apparent reason this closing would:

- Be contrary to the public interest
- Deprive any individual(s) owning property in the vicinity of reasonable means of ingress and egress to his property as outlined in the statutes

Attachment 3

Map
Resolution

9. Public Hearing for Floodplain Regulations Revisions

- Action:** **A. Conduct a public hearing on the revisions to the floodplain regulations, and**
- B. Adopt an ordinance amending City Code Chapter 9, floodplain regulations.**

Staff Resource: Jennifer Smith, Engineering & Property Management

Explanation

- The Federal Emergency Management Agency (FEMA) requires that all local floodplain regulations comply with FEMA and state requirements.
- The revisions will allow Charlotte to continue to be part of the National Flood Insurance Program and property owners will continue to be eligible for FEMA flood insurance.
- The current Flood Insurance Rate Maps (FIRMs) for Mecklenburg County were adopted by City Council for regulation of new development in 2000. FEMA began using the maps to regulate flood insurance in 2004.
- These maps do not meet the new statewide map panel size standards. Because of this, North Carolina Floodplain Mapping program (NCFPM) has recently revised the size of all the FIRM map panels that cover Mecklenburg County. The new FIRM map panels become effective for FEMA purposes on March 2, 2009.
- No changes in flood elevations or floodplain widths occurred; only the size and format of the map panels have changed. The state paid for the new map panels.
- NCFPM has also modified the statewide model ordinance with new language that is required for local floodplain regulations to be deemed compliant.
- The current ordinance was adopted by City Council in 2007. The revisions include:
 - Addition of definitions
 - Inclusion of a severability statement
- The regulations and the proposed changes have no impact on the current regulation of development in or near floodplains or on any houses.
- The proposed revisions have been approved by the Storm Water Advisory Committee and Subdivision Steering Committee.
- Mecklenburg County will hold a public hearing and vote on the proposed revisions to its floodplain regulations on February 17, 2009.

Funding

The proposed revisions to the Floodplain Regulations will not impact the Storm Water budget or the General Fund.

Attachment 4

Summary of the Proposed Revisions
Floodplain Regulations Ordinance

POLICY

10. City Manager's Report

BUSINESS

11. Scaleybark Development Agreement Amendment

Action: **A. Approve the First Amendment to the General Development Agreement with Scaleybark Partners, LLC to adjust the payments due in February 2009 and February 2010 and to allow the developer to defer the start of certain construction activities obligated by the agreement, and**

B. Authorize the City Manager to execute any additional documents necessary to implement the amendment.

Staff Resources: Peter Zeiler, Economic Development
 Bob Hagemann, City Attorney's Office
 Tina Votaw, Transit

Explanation

- In June 2007 City Council approved a Purchase and Sale Agreement (PSA) with Scaleybark Partners, LLC for the sale of approximately 16 acres of land along South Boulevard. Subsequent to the initial approval, Council approved Amendments to the PSA extending the Buyer's Examination Period as well as the closing date. The PSA called for a purchase price of \$6,985,000.
- Due diligence activity by Scaleybark Partners, LLC revealed challenging soil conditions that will require the construction of more costly foundations than could have been reasonably expected. An Amendment to the PSA was approved by Council on February 11, 2008 that reduced the purchase price by \$1.8 million from \$6,985,000 to \$5,185,000.
- The City and Scaleybark Partners, LLC closed the sale on February 29, 2008 under the following payment terms:
 - \$1,397,000 at closing (payment received)
 - \$3,324,500 due on or before February 28, 2009
 - \$463,500 due on or before February 28, 2010
- Due to current economic conditions, Scaleybark Partners, LLC seeks to modify the amount of each remaining payment and to adjust the start dates of certain contractually obligated construction activities.

| Existing Payment Obligation | Proposed Payment Obligation |
|---------------------------------|-----------------------------------|
| February 28, 2009 - \$3,324,500 | February 28, 2009 - \$2,200,000* |
| February 28, 2010 - \$463,500 | February 28, 2010 - \$1,655,470** |

*The proposed payment of \$2,200,000 when made on or before February 28, 2009 represents the final payment for the CATS property sold to Scaleybark Partners, LLC as part of this transaction. This payment will satisfy the City/CATS funding obligation required as part of the South Corridor Light Rail Project budget mitigation plan as agreed to with the Federal Transit Administration.

**The proposed payment of \$1,655,470 on February 28, 2010 includes 6% interest charged to the deferred amount of \$1,124,500, totaling \$67,470.

- In the event the developer is able to pay the entire amount prior to February 28, 2010, the amount paid will be reduced by a six percent annual rate, prorated to the month.
- This Amendment also provides for the deferral of the start dates of the construction of certain improvements obligated in the original PSA for the developer to build.

| Activity | Original Date | Proposed Date |
|----------------------------|-------------------|-------------------|
| Linear Park | February 15, 2009 | January 15, 2011 |
| Streetscape Improvements | May 15, 2009 | January 15, 2011 |
| Pre-marketing expenditures | February 15, 2009 | January 15, 2011 |
| CATS Park and Ride Deck | February 28, 2013 | February 28, 2014 |

- The one year deferral of delivery of the permanent CATS Park-n-Ride will not affect CATS' ongoing use of the existing temporary Park-n-Ride and use by transit patrons.
- The construction of any vertical improvements on the site prior to January 15, 2011 would require the concurrent construction of streetscape improvements on any blocks on which the improvements take place.

Funding

The project was funded from two capital project sources, with proposed developer payments to the City being credited to the capital project funds listed below:

| | |
|--|---------------------------------------|
| CATS CIP (construction of Park-n-Ride lot) | \$3,597,000 |
| General Government CIP (land purchase) | <u>1,655,470</u> (including interest) |
| Total | \$5,252,470 |

12. Nominations to Boards and Commissions

Action: Nominate citizens to serve as specified.

A. AIRPORT ADVISORY COMMITTEE

- One appointment for a Westside resident for an unexpired term beginning immediately and ending July 31, 2011
 - Grace Bailey did not meet the attendance requirement.

Attachment 5
Applications

B. CITIZENS' TRANSIT ADVISORY GROUP

- One appointment for an unexpired term beginning immediately and ending June 30, 2009, then continuing for the next full three year term ending June 30, 2012
 - Michelle Mallard did not meet the attendance requirement.

Attachment 6
Applications

C. CHARLOTTE MECKLENBURG PUBLIC ACCESS CORPORATION

- Two appointments for unexpired terms beginning immediately and ending June 30, 2010 and June 30, 2011
 - Billy Scott (2010) did not meet the attendance requirement.

- Anja Arnholdt (2011) did not meet the attendance requirement.

Attachment 7

Applications

D. KEEP CHARLOTTE BEAUTIFUL

- One appointment for an unexpired term beginning immediately and ending June 30, 2009, then continuing for the next full three year term ending June 30, 2012
 - Roketa Dumas did not meet the attendance requirement.
- One appointment for an unexpired term beginning immediately and ending June 30, 2010
 - Jim Thompson resigned.

Attachment 8

Applications

E. TREE ADVISORY COMMISSION

- One appointment for a three year term beginning immediately and ending December 13, 2011
 - William James Clark resigned.

Attachment 9

Applications

13. Appointments to Boards and Commissions

Action: Vote on blue paper ballots and give to Clerk at dinner.

A. BICYCLE ADVISORY COMMITTEE

- One appointment for an unexpired term beginning immediately and ending December 31, 2011
 - William James Clark nominated by Council members Burgess, Carter, Kinsey and Turner
 - L. Wayne Sams nominated by Council members Barnes, Foxx, Lassiter and Mitchell

Attachment 10

Applications

B. HOUSING APPEALS BOARD

- One appointment for an unexpired term beginning immediately and ending December 31, 2011
 - Charles Lewis Assenco nominated by Council members Barnes, Carter, Kinsey and Mitchell
 - Shannon Boling nominated by Council members Cooksey and Dulin

Attachment 11

Applications

14. Mayor and Council Topics

Council members may share information and raise topics for discussion.

15. Closed Session

Action: Adopt a motion to go into closed session pursuant to:

- A. NCGS 143-318.11(a)(4) to discuss matters relating to the location of industries or businesses in the City of Charlotte, including potential economic development incentives that may be offered in negotiations, and**
- B. NCGS 143-318.11(a)(5) to establish, or to instruct staff or negotiating agents concerning the position to be taken by or on behalf of the City Council in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease.**

Introduction to CONSENT

The consent portion of the agenda is divided into two sections: Consent I and Consent II.

Consent I consists of routine items that have been approved in the budget, are low bid and comply with Small Business Opportunity Program Policy.

Consent II consists of routine items that have also been approved in the budget, but require additional explanation.

The City's Small Business Opportunity (SBO) Program's purpose is to enhance competition and opportunity in City contracting with small businesses in the Charlotte metropolitan statistical area. Participation of small business enterprises (SBE) is noted where applicable. Contracts recommended for award as of March 1, 2003 comply with the provisions of the SBO program policy for SBE outreach and utilization. Professional service contracts recommended for award as of August 1, 2003 comply with the provisions of the SBO program policy for SBE outreach and utilization.

Disadvantaged Business Enterprise (DBE) is a federal program primarily used for Aviation and Transit.

Contractors and Consultants

All contractor and consultant selections follow the Council approved process unless described otherwise. For the procurement of professional services and/or engineering architectural and surveying services, the North Carolina General Statutes 143-64.31 requires that units of government "select firms qualified to provide such services on the basis of demonstrated competence and qualification...without regard to fee other than unit price information, and therefore to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm."

CONSENT I

16. Various Bids

A. **Heavy Trucks, Construction Equipment and Miscellaneous Vehicles** **BSS**

Staff Resources: Chuck Robinson, Business Support Services
Mehl Renner, Business Support Services

Action

Award the low bid unit price contracts for providing Heavy Trucks, Construction Equipment and Miscellaneous Vehicles for a term of one year and authorize the City Manager to renew up to two additional one year terms with possible price adjustments at the time of renewal as authorized by the contract. There will be no obligation to purchase any quantity. The various types of equipment include dump trucks,

aerial bucket trucks, crane trucks, pothole patch trucks and pickups. All identified are required for work accomplished by different key business units. The total expenditure per vendor and in total will depend on approved funding for all contract terms. FY2009 expenditures are anticipated to be a combined total of \$1,688,532 with the following vendors:

Map Enterprises, Inc.
 Piedmont Truck Center
 Charlotte Truck Center, Inc.
 Rush Truck Center of NC (dba Rush International)
 Capital Ford of Wilmington, NC
 Briggs Construction Company
 Parks Chevrolet

Small Business Opportunity

No SBE goals are established for purchases of goods and equipment due to limited opportunities for subcontracting (Appendix Section 18 of the SBO Policy).

B. Shopton Road Improvements

EPM

Staff Resource: Jonathan Sossamon, Engineering & Property Management

Action

Award the low bid of \$ 562,478.72 by Advanced Development Concepts. This project will upgrade a privately maintained section of Shopton Road West to Non-System Residential Street Program standards and extend water and sanitary sewer lines. The project limits extend 0.9 miles from Shopton Road West to the end of the privately-maintained section. There were two property owners, out of 23, who held out initially. After negotiations, an amicable agreement was met and the needed property and easements were acquired.

Small Business Opportunity

Established SBE Goal: 6%

Committed SBE Goal: 35.47%

Advanced Development Concepts committed 35.47% (\$199,492.80) of the total contract amount to the following SBE firm: State Construction Co of the Carolinas, LLC.

C. McAlpine Creek Wastewater Management Facility Centrifuge Replacement

CMU

Staff Resource: Doug Bean, Utilities

Action

Award the low bid of \$197,456 by Hickory Construction Co. This project provides replacement of one of the dewatering centrifuges at McAlpine Creek Wastewater Management Facility. These units are used to remove excess water from the treatment plant biosolids before they are hauled to farms for land application. The unit being replaced is chronically unreliable, creating high maintenance costs. Should this

centrifuge fail, the plant is in jeopardy of not being able to handle its current level of waste dewatering.

Small Business Opportunity

Under the revised SBO Policy, construction contracts under \$200,000 are considered informal with regard to the SBE subcontracting goal setting process, therefore establishing SBE goals is not required (Appendix Section 29.1 of the SBO Policy).

17. Resolution of Intent to Abandon a Portion of Withers Road

Action: A. Adopt the resolution of intent to abandon a portion of Withers Road, and

B. Set a public hearing for March 9, 2009.

Staff Resource: Linda Poissant, Transportation

Attachment 12

Map
Resolution

CONSENT II

18. Hansen Work and Asset Management System Upgrade

Action: Authorize the City Manager to execute a contract not to exceed \$215,000 with Hansen Information Technology, Inc. for professional services required to upgrade CDOT's existing work and asset management system.

Staff Resources: Phil Reiger, Transportation
Jeff Stovall, Office of the Chief Information Officer

Explanation

- This contract provides professional services to implement a system upgrade for CDOT's existing work and asset management system.
- There are two significant benefits the City will receive from an upgrade:
 - Included with the upgrade is the implementation of new pavement management functionality. This functionality will provide a more sophisticated approach to storing and evaluating pavement condition data as referenced in the City's Transportation Focus Area Plan. It will enhance CDOT's ability to evaluate impacts that different maintenance practices and funding options will have on pavement conditions. Ultimately, CDOT anticipates that the functionality will improve staff's ability to maximize the use of resurfacing funding.
 - The upgrade also provides the City with added capabilities to link CDOT's work management system and CharMeck 311's customer service system. The enhancements streamline the flow of information between 311 and CDOT, thus allowing customer service agents to access request status and better respond to customer inquiries in real time. This will improve productivity and customer service capabilities for both 311 and CDOT given that agents would be better positioned to provide one call resolution and avoid transfer to CDOT staff for status updates.
- Other benefits include GIS integration, e-business capability and advanced asset management functionality.

Background

- For the past ten years CDOT has relied on the Hansen Information Technologies' work and asset management system to track customer requests, manage and schedule work, and track cost.
- Approximately four years ago, Hansen significantly modernized its system. At that time, CDOT did not upgrade in order to allow time for the vendor to work out issues with the new software version.
- The upgrade of the system does not require purchase of the new Hansen software; the software license is covered under existing maintenance agreements. Professional services are required from Hansen to implement the upgrade.
- The contract includes project planning, process design, software installation, software configuration, data conversion, system testing, user training, report development and project closure and review.

- The total cost of the upgrade project is \$240,000. Other related expenses not reflected in the professional services contract include \$25,000 for hardware.

Small Business Opportunity

No SBE goal was set for this contract because subcontracting opportunities are not anticipated (Part C: Section 2.4 of the SBO Policy).

Funding

Transportation Operating Budget

19. Aircraft Maintenance Hangar Lease

Action: Approve a five year lease agreement with Mesa Airlines, Inc. for an aircraft maintenance hangar in the amount of \$2,192,800.

Staff Resource: Jerry Orr, Aviation

Explanation

- Mesa Airlines, Inc. flies as United Express, Delta Connection and US Airways Express at Charlotte.
- Mesa has leased a hangar at Charlotte for over ten years and has approximately 70 employees that work in their aircraft maintenance operations in Charlotte.
- That hangar must be removed before the new runway can be commissioned.
- On March 24, 2007 Council approved a construction contract with Morlando-Holden for construction of Mesa's new 40,000 square foot hangar. Hangar construction will be completed and ready for occupation in February 2009.
- This agreement will provide for a five year lease of the approximately 34,765 square foot hangar and office space at a total annual cost of \$438,560.

20. Federal Aviation Administration Grant

Action: A. Adopt a resolution accepting a Federal Aviation Administration (FAA) grant in the amount of \$14,340,842 for Airport projects related to the new third parallel runway, and

B. Adopt a budget ordinance appropriating \$14,340,842 in FAA grant funds.

Staff Resource: Jerry Orr, Aviation

Explanation

- Each year the Airport qualifies for FAA entitlement funds based on passenger enplanements under the Airport Improvement Program. The Airport's FY2009 entitlement funds currently available are \$3,340,842. Additional entitlement funds may be available later in the year.
- In December 2006 the FAA issued its Letter of Intent (LOI) to provide \$80 million dollars over eight years in federal funds to be applied towards the

cost of constructing the new runway. The FY2009 allocation of this LOI is \$11 million dollars and is included in the \$14,340,842 grant offer. This is the third installment of the LOI.

- This grant will be used to fund a portion of the costs associated with the following project elements:
 - Runway grading and drainage
 - Runway paving and lighting
 - Runway construction administration
 - Runway utilities relocation
 - Old Dowd Road relocation
 - Navigational aid design

Attachment 13

Resolution
Budget Ordinance

21. Northcross Water Valve Break Damage Claim

Action: Approve payment in an amount not to exceed an additional \$200,000 for completion of restoration, reconstruction work and loss of business income as a result of damage to a commercial building and four commercial tenants resulting from a flood caused by a water main malfunction.

Staff Resources: Mac McCarley, City Attorney's Office
Judy Pitts, Risk Management

Explanation

- A water main malfunctioned at approximately 10:00 a.m. on November 30, 2008. Utilities personnel responded and advised that a valve stuck in the open position, causing substantial amounts of water to cascade into the commercial building located at 15905 Brookway Drive, Huntersville, NC 28078, also known as the Pinnacle Building in the Northcross development.
- Four businesses in the building were flooded, resulting in substantial monetary losses, as detailed in the attached documents. The valve had previously failed and been repaired by Utilities.
- Risk Management has already paid \$95,356.79 to the owner of the building and \$59,093.44 to one of the tenants within the authority of the City Manager. The additional \$200,000 is needed to complete the settlements on this incident.

Funding

Risk Management Fund

Attachment 14

Documentation of damages submitted by the four commercial tenants: Loretta's Flowers, People's Choice Mortgage, Chase Staffing and Inches-A-Weigh

22. Fred D. Alexander Boulevard Project Condemnation Settlement Additional Compensation

Action: Approve final legal settlement of \$199,000 in the condemnation case captioned City of Charlotte v. Crowder Construction Company, 07 CVS 14151, Mecklenburg County Superior Court.

Staff Resources: Mac McCarley, City Attorney's Office
Bradley Thomas, City Attorney's Office

Explanation

- A condemnation acquired property from Crowder Construction Company, located on Brookshire Boulevard, as follows:
 - 63,147 square feet in fee simple
 - 25,577 square feet of permanent drainage easement
 - 17,404 square feet of permanent slope easement
 - 15,951 square feet of temporary construction easement
- Council authorized condemnation for the construction of the Fred D. Alexander Boulevard Project Section C, in the appraised amount of \$30,675. This initial appraisal from December 2006 valued the land and improvement acquisition at \$78,700, and then reduced that number by \$48,025 to account for the perceived benefits the Crowder Property would have by virtue of the new road and associated frontage ($\$78,700 - \$48,025 = \$30,675$).
- The City's original taking acquired 1.45 acres in fee simple and encumbered approximately one additional acre with slope and drainage easements. One of the major concerns expressed by the property owners was the .895 acre remnant that was left severed from the remaining property, resulting from the new road location. This severed parcel was left with little utility due to its location and slope.
- Crowder obtained an MAI appraisal which valued the taking at \$286,000. This appraisal did not appreciate the benefits that were conferred by the City's original appraisal and argued that the current and highest and best use of the property would not be positively enhanced by the change in access and the new four lane roadway. Furthermore, the appraisal found a higher land value and found the damage to the remainder of the property to be more significant.
- In anticipation of litigation, the City obtained an additional MAI appraisal. The property was evaluated at the date of taking and valued the acquisition at \$155,775 and subtracted \$23,975 in benefits to arrive at a value of \$131,800. Staff believes this appraisal more accurately reflects the value of our taking.
- The case proceeded to court-ordered mediation where the parties reached a tentative agreement. The settlement calls for a total amount of \$199,000 which would cover the initial fee simple and easement acquisitions stated in the complaint, and would also include the purchase in fee simple of the .895 acre remnant that was severed from the main tract raised by Crowder. The purchase of the .895 acre remnant will help the City provide an access easement to another adjacent property owner who will also be affected by the project. It is anticipated that the City will be able to either avoid condemnation or significantly reduce its acquisition costs with the offering of the access easement.
- The settlement amount would require an additional \$168,325 over the City's deposit, however this would only be a 50% increase from the evidence staff would present at trial, using the second appraisal at

\$131,800, which has been reduced to account for benefits. Moreover, this settlement includes nearly an extra acre in fee simple that was not considered in either appraisal, increasing the original fee acquisition from 1.45 to 2.34 acres. Accordingly, when considering the straight land value of the second appraisal without benefit reduction (\$155,775) the settlement would be an increase of \$43,225 or 28%.

- In addition to being a good compromise for the City's risk, this settlement also purchases an additional .895 acres in fee simple which will allow the City to resolve another acquisition issue with the adjacent property owner, as well as avoid the interest and court costs associated with a larger jury verdict.

Funding

Transportation Capital Investment Plan

23. Property Transactions

Action: Approve the following property transaction(s) (A) and adopt the condemnation resolution(s) (B).

NOTE: Condemnation Resolutions are on file in the City Clerk's Office.

Acquisitions

- A. Project:** Dixie River Road Realignment, Parcel # 3
Owner(s): Charles William Shubert and Wife, Pamela R. Shubert
Property Address: 9617 Steele Creek Road
Property to be acquired: 7,141 sq. ft. (.164 ac.) in Fee Simple, plus 2,462 sq. ft. (.057 ac.) in Temporary Construction Easement
Improvements: None
Landscaping: None
Purchase Price: \$63,250
Remarks: Compensation was established by an independent, certified appraisal and appraisal review.
Zoned: R-3
Use: Rural Homesite
Tax Code: 201-091-06
Total Parcel Tax Value: \$143,400

Condemnations

- B. Project:** Beaverdam Creek Tributary #2 - Sewer Extension, Parcel # 7
Owner(s): Muhammad Development Group, Incorporated and Any Other Parties of Interest
Property Address: 4920 Trojan Drive
Property to be acquired: Total Combined Area of 7,488 sq. ft. (.172 ac.) of Temporary Construction Easement
Improvements: None
Landscaping: None
Purchase Price: \$3,825
Remarks: Compensation was established by an independent,

certified appraisal and an appraisal review. City staff has yet to reach a negotiated settlement with the property owner.

Zoned: R-3

Use: Single Family Residential

Tax Code: 199-241-22

Total Parcel Tax Value: \$25,600

24. Meeting Minutes

Action: Approve the titles, motions and votes reflected in the Clerk's record as the minutes of:

- December 15, 2008
- January 5, 2009