

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

**PLEDGE OF ALLEGIANCE**

Ms. Susan Lifchez' 4<sup>th</sup> Grade Class from Ira B. Jones Elementary School led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Mumpower gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING OCTOBER 24, 2006, AS "ACUPUNCTURE AND ORIENTAL MEDICINE DAY"**

Councilman Newman read the proclamation proclaiming October 24, 2006, as "Acupuncture and Oriental Medicine Day" in the City of Asheville. He presented the proclamation to Ms. Beth Anne Grant, Operations Manager for Atlantic University of Chinese Medicine, who briefed City Council on some activities taking place during the day.

**II. CONSENT AGENDA:**

At the request of City staff, Consent Agenda Items "G" and "H" were pulled from the Consent Agenda until a later date.

At the request of Councilman Mumpower, Consent Agenda Items "B", "D" and "F" were removed from the consent agenda for individual discussions.

At the request of Mayor Bellamy, Consent Agenda Items "K" and "L" were removed from the Consent Agenda for individual votes.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 26, 2006**

**B. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE WITH THE UNITED STATES OF AMERICA FOR THE ARMY RESERVE CENTER LOCATED AT 224 LOUISIANA AVENUE**

This item was pulled from the Consent Agenda for individual discussion.

**C. RESOLUTION NO. 06-175 - RESOLUTION AUTHORIZING THE MAYOR TO EXCHANGE A PORTION OF REAL PROPERTY LOCATED ON 749 FAIRVIEW ROAD FOR A PORTION OF REAL PROPERTY LOCATED AT 723 FAIRVIEW ROAD**

Summary: The consideration of a resolution authorizing the exchange of a portion of real property located at 749 Fairview Road for a portion of real property located at 723 Fairview Road.

The City and Dan Zorn, principal of Famprop LLC (Famprop), have negotiated an exchange of a portion of City owned real property at 749 Fairview Road for a portion of property Famprop is purchasing at 723 Fairview Road.

The proposed exchange is to correct a long standing encroachment and provide a more consistent property line between the City's property and the Famprop property.

The City's property (PIN 9657.97-58-1784) is on the south side of Fairview Road at its intersection with Liberty Street, zoned RS8 Residential Single-Family High Density District and improved with a Fire Station, Public Library and Community Center. The portion to be exchanged is a 0.12 acre± parcel at Fairview Road on the west side of the City's parcel as it adjoins the Famprop property. This part of the property is on the outside of the City's fence and has never been utilized by the City. It is this portion of the property where one of the buildings on the Famprop property has encroached for a number of years.

The property being purchased by Famprop (PINs 9657.07-58-0712; 0682) on Fairview Road is on the south side of the street about 315' west of its intersection with Liberty Street. It is zoned RS8 Residential Single-Family High Density District and is improved with a large residential structure. The portion to be exchanged is a 0.12 acre± parcel located at the rear of the property adjoining the City's property.

A review of the tax assessments for the properties indicate broad variations between per acre values of parcels in the area that would be attributed to the size differential between parcels. Comparable lot values range from 21,500 for 0.16 acre to 27,400 for 0.42 acre. The values of the parcels to be exchanged are estimated to be roughly equal based on shared characteristics including location, size, shape and topography. The value for each exchange parcel is estimated to be about \$20,000± each for 0.12 acre.

Pros:

1. The exchange will be a fair exchange of value for value.
2. It will be revenue neutral returning property to the tax rolls in exchange for property being taken off the tax rolls.
3. It will correct the long standing structural encroachment.
4. It will provide a better more consistent property line.

Cons: There are no negative aspects to this proposal.

Economic Development, Fire Department and Parks & Recreation staff recommends adoption of the resolution authorizing the exchange of a portion of City owned real property located at 749 Fairview Road for a portion of real property located at 723 Fairview Road.

**RESOLUTION BOOK NO. 30 – PAGE 116**

**D. RESOLUTION FOR INTERNATIONAL COUNCIL FOR LOCAL ENVIRONMENT INITIATIVES (ICLEI) AND CITIES FOR CLIMATE PROTECTION CAMPAIGN PARTICIPATION**

This item was pulled from the Consent Agenda for individual discussion.

**E. RESOLUTION NO. 06-177 - RESOLUTION AUTHORIZING PINES PROPERTIES INC. TO CONVEY PROPERTY LOCATED AT 128 MCENTIRE ROAD IN RUTHERFORDTON, N.C., TO BRAD FORD IN THE AMOUNT OF \$398,800**

Summary: The consideration of a resolution authorizing Pines Properties, Inc. to convey 128 McEntire Road.

Pines Properties, Inc. advertised for upset bids pursuant to a bid from Brad Ford for real property at 128 McEntire Road, Rutherfordton, North Carolina, in the amount of \$398,000. The advertisement was published on September 29, 2006, and no upset bids were received.

128 McEntire was bequeathed to the City as by Jake Rusher. It is an irregular shaped parcel comprising 23.79 acres±. It is improved with a three bedroom log house, a barn, several outbuildings and fencing. It is located in a rural area of Rutherford County. The offer from Brad Ford is in the amount of \$398,800. The offer was submitted through the listing agent, Scott Jackson of Odean Keever & Associates. The property was listed at \$389,500 based on a market analysis at the time of listing. A previous offer of \$370,000 was advertised and upset by the current offer. The real estate commission on the sale will amount to 6% or \$23,928.

Pros:

1. The sale will be at fair market value as established by the upset bid process.
2. The sale will generate revenue from the disposition of an un-needed asset.
3. It will return property not needed for public use to private ownership.
4. It will transfer responsibility for maintenance to the private sector.

Cons: There is no negative impact.

The proceeds from the sale of this parcel will be General Revenue Income.

Economic Development staff and Parks & Recreation staff recommend adoption of the resolution authorizing Pines Properties, Inc. to convey 128 McEntire Road.

**RESOLUTION BOOK NO. 30 – PAGE 119**

**F. BUDGET AMENDMENT FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY TO COVER DAMAGES TO AZALEA PARK RESULTING FROM HURRICANE IVAN**

This item was pulled from the Consent Agenda for individual discussion.

**G. RESOLUTION AMENDING THE INTERLOCAL AGREEMENT FOR REGIONAL AIR QUALITY CLEAN AIR PROGRAM - COMMUNITY TRUST**

This item was removed from the Consent Agenda until a future date.

**H. RESOLUTION ACCEPTING THE RIGHT-OF-WAY OF GERBER ROAD AS A CITY MAINTAINED RIGHT-OF-WAY**

This item was removed from the Consent Agenda until a future date.

**I. RESOLUTION NO. 06-178 - RESOLUTION ACCEPTING THE U.S. DEPT. OF JUSTICE GRANT FOR THE WEST RIVERSIDE OPERATION WEED AND SEED CRIME INITIATIVE**

Summary: The consideration of (1) a resolution to accept the U.S. Department of Justice Grant for the "West Riverside Operation Weed and Seed" Crime Initiative; and (2) a budget amendment, in the amount of \$175,000, to accept these funds.

On July 12, 2006, the U.S. Justice Department announced the designation of Asheville as an "Officially Recognized" site for the federal Weed and Seed program aimed at reducing crime. This process began in October of 2004 when a number of concerned elected officials, city staff, community residents and Asheville citizens mobilized to develop comprehensive strategies to address issues of law enforcement, neighborhood restoration, and prevention/intervention/treatment programs and activities in the target area.

As per the requirements of the U.S. Department of Justice application process, a series of "Public Input Meetings" were held to determine the concerns of residents of the target area. The Weed and Seed Program concept was also introduced to the community and was received favorably with the understanding that residents would be integrally involved in the planning and implementation of the program. The West Riverside Operation Weed and Seed Steering Committee, residents and several community based resource providing agencies such as the Housing Authority, Asheville City Schools, Children First, YMCA/YWCA, NAACP, Mission Hospital, A-B Technical Community College, UNC-Asheville and others will collaborate to improve quality of life for the residents of the Pisgah View, Burton Street and Asheville.

On August 15, 2006, Attorney General Alberto Gonzales formally announced the approval of the City of Asheville's application for funding as a new site in the amount of \$175,000. Fifty percent of the funds will be used to support community police programs; and 50% will be used to support neighborhood initiatives such as youth services, parenting programs, health and nutrition programs, vocational programs, neighborhood clean up, housing services, and to hire a Weed & Seed Site Coordinator that will work out of the Parks & Recreation Department. No City funding will be required to support this first-year grant. The grant may potentially be a multi-year grant that will require an application each year.

Pros:

- Significantly reduce violent crime and drug activity in the area of the city that highest number of criminal activity
- Provide a comprehensive plan to address law enforcement, neighborhood restoration and preventive/intervention/treatment programs for the residents of the target area
- Mobilize community residents to collectively improve the conditions of the target area
- Provide resources for residents as a means of personal growth and development
- Multi-agency collaboration relative to addressing social, education, economical, cultural problems in the target area.
- Leverage resources to sustain the program and replicate the strategies in other problem areas of the city

Cons:

- Resistance and fear of change in the target area.

This recommendation is keeping with the City of Asheville Strategic Plan by contributing to the:

- “Livability” of Asheville by improving the safety and wellbeing of residents of the target area
- “Sense of Place” of Asheville and the need to educate citizens about the importance of working together as a community to improve the conditions of the community
- “Participation” of Asheville citizens in the process of program development as programmatic and strategic contributors

The Parks and Recreation Department on behalf of the West Riverside Operation Weed and Seed Steering Committee recommends adoption of (1) the resolution to accept the U.S. Department of Justice grant in the amount of \$175,000 for the “West Riverside Operation Weed and Seed” Crime Initiative; and (2) a budget amendment, in the amount of \$175,000, to accept these funds.

**RESOLUTION BOOK NO. 30 – PAGE 120**

**J. ORDINANCE NO. 3396 - BUDGET AMENDMENT TO ACCEPT THE U.S. DEPT. OF JUSTICE GRANT FOR THE WEST RIVERSIDE OPERATION WEED AND SEED CRIME INITIATIVE**

Summary: See Consent Agenda “I” above.

**ORDINANCE BOOK NO. 23 – PAGE 98**

**K. RESOLUTION NO. 06-179 - RESOLUTION ACCEPTING LAND KNOWN AS OWENS-BELL PARK FROM MOUNTAIN HOUSING OPPORTUNITIES AND APPROVING THE NAME OF OWENS-BELL PARK**

This item was removed from the Consent Agenda due to a conflict of interest.

**L. RESOLUTION NO. 06-180- RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LEAGUE SOCIAL AS A PART OF THE ASTON PARK TENNIS CENTER**

This item was removed from the Consent Agenda for a separate vote.

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

**ITEMS PULLED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES**

**RESOLUTION NO. 06-174- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE WITH THE UNITED STATES OF AMERICA FOR THE ARMY RESERVE CENTER LOCATED AT 224 LOUISIANA AVENUE**

Summary: The consideration of a resolution authorizing execution of a Lease of City-owned real property at 224 Louisiana Avenue to the United States of America.

The property at 224 Louisiana Avenue known as the Army Reserve Center is an 8.857 acre tract on the West side of Louisiana Avenue about 200' from its intersection with Patton Avenue. Although most of the property is generally level, there is a steep slope with rock outcroppings covering the Southeast quadrant of the property. This presents a formidable challenge to further grading of the property, so the useable area is about 6+ acres. The property is currently zoned Institutional. Due to its location and size the highest and best use for the property would be an institutional use, such as a nursing home, assisted living facility or high density residential. The single story building and other improvements located on the property were built by the Army Reserve and remain the property of the Reserve with the right of removal for the duration of the lease. The property was leased to the USA in 1950 at a rent of \$1.00 for the entire 50 year term. The most recent lease for six years was signed in 2000 at an annual rent of \$60,000.

The USA lease expired at the end of June and the Army Reserve has offered to enter into a new lease for the property for a term of three (3) years at an annual rent of \$112,000. Although the lease does not contain an annual escalation clause the rent is at the high end of the rent range and the term was reduced to three (3) years. The Reserve Center has been a good caretaker of the property and no complaints have been received regarding any condition or activities at the site.

This item was pulled from the August 22<sup>nd</sup> agenda in order for staff to assess the proposed lease in connection with the

potential redevelopment of the property. It is the opinion of staff that the long term best use for the property would be a use capable of producing economic return consistent with the close proximity to Patton Avenue; however, such conversion of the property would require an appropriate amount of public discussion and sufficient planning of the project and marketing of the property. A short term lease as proposed with the USA maintains a significant revenue stream for the City while allowing considerable flexibility should an opportunity for redevelopment arise.

It is the opinion of staff that the long term best use for the property would be a use capable of producing economic return consistent with the close proximity to Patton Avenue; however, such conversion of the property would require an appropriate amount of public discussion and sufficient planning of the project and marketing of the property. A short term lease as proposed with the USA maintains a significant revenue stream for the City while allowing considerable flexibility should an opportunity for redevelopment arise.

Pros:

- a. The rent revenue for this property will be significantly increased.
- b. The rent is at the high end of the rent range for this property.
- c. The shorter term will allow re-evaluation of the lease sooner.
- d. The Army Reserve Center provides a valuable public service.

Cons:

- a. The property does not generate tax revenue, but this is offset by the rent revenue.
- b. The current is not the ideal, long-term development.

Economic Development staff recommends adoption of the resolution authorizing execution of a lease of City-owned real property at 224 Louisiana Avenue to the United States of America.

Upon inquiry of Councilman Mumpower, Real Estate Manager Ed Vess explained why the rent escalated from \$1 to \$60,000 to \$112,000 annually.

Councilman Mumpower wondered if the reason why the lease was only \$1 annually in the 1950's is because there was some community spirit to support our Army Reserve. He feels like we are gauging the Army Reserve and felt \$112,000 annually was too high.

Mayor Bellamy asked the Army Reserve is using all the property or is there a portion of property available for development. Mr. Vess said that if the slope were graded down, we could probably add another 25% to the total usable area; however, the lease is for the entire property. Even though the reservists are not there all the time, when they are there, they do need the entire property.

Mayor Bellamy said that the Social Security Office has a lease for \$33,000 a month for rent in their current location and at that location, we cannot serve them with bus service. She asked if Council would be interested in directing City staff to see if there is any opportunity for these two federal programs to co-exist on that property, which would save the federal government some money.

Councilwoman Cape felt that the property sets in an area that is part of our core development plans and there could be other higher and greater uses for the property in the long run. She felt we should look into this idea further.

Councilman Freeborn felt that if that location is not suitable, it might be a possibility to offer the Social Security Officer another piece of city-owned property that is on the bus line.

Vice-Mayor Jones would be interested in beginning conversation on this possibility, however, was not as interested in looking at City-owned property.

It was the majority of Council's decision to direct City staff to see if there is any opportunity for the Army Reserve and the Social Security Office to co-exist at 224 Louisiana Avenue.

Vice-Mayor Jones moved for the adoption of Resolution No. 06-174. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**RESOLUTION NO. 06-176 - RESOLUTION FOR INTERNATIONAL COUNCIL FOR LOCAL ENVIRONMENT INITIATIVES (ICLEI) AND CITIES FOR CLIMATE PROTECTION CAMPAIGN PARTICIPATION**

Summary: The City of Asheville will join ICLEI as a Full Member and participate in the Cities for Climate Protection Campaign and, as a participant that pledges to take a leadership role in promoting public awareness about the causes and impacts of climate change.

In addition, the City of Asheville will undertake the Cities for Climate Protections Campaign five milestones to reduce both greenhouse gas and air pollution emissions throughout the community and specifically; (1) Conduct a greenhouse gas emissions inventory and forecast to determine the source and quantity of greenhouse gas emissions in the jurisdiction; (2) Establish a greenhouse gas emissions reduction target; (3) Develop an action plan with both existing and future actions which when implemented will meet the local greenhouse gas reduction target; (4) Implement the action plan; and (5) Monitor and report progress.

Also, the City requests assistance from ICLEI's Cities for Climate Protection Campaign as it progresses throughout the milestones.

Councilman Mumpower was concerned about the language and the potential for abuse.

Councilman Davis confirmed that the membership fee of \$1,200 is for software and staff support for the greenhouse gas emissions inventory for use by in-house staff.

Councilwoman Cape felt this is a good tool for us to use in-house because it is important to have a baseline understanding of where we are at and how we can improve and save money and energy at the same time.

Councilman Newman asked if the software tool would be available to other organizations in the community. City Manager Jackson said the software maybe copyrighted and we would not be able to reproduce or distribute the software, without their permission. However, what information the City does learn will be shared with the Task Force formed by Council.

City Manager Jackson said that this will be administered by his office. In addition Director of Public Works Mark Combs will be serving in the role of environmental manager.

Councilman Newman moved for the adoption of Resolution No. 06-176. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**RESOLUTION BOOK NO. 30 – PAGE 117**

**ORDINANCE NO. 3395 - BUDGET AMENDMENT FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY TO COVER DAMAGES TO AZALEA PARK RESULTING FROM HURRICANE IVAN**

Summary: The consideration of a budget amendment in the amount of \$781,062 (\$597,472 in anticipated reimbursements from Federal Emergency Management Agency ("FEMA") and \$183,589 from fund balance) to cover damages to Azalea Park resulting from of Hurricane Ivan.

The City of Asheville sustained severe damage at Azalea Park from the hurricanes of September 2004. The damage included:

- 1) the destruction of soccer turf on 1½ of the fields
- 2) the accumulation of large amounts of debris and sediment at the Azalea Park site
- 3) the erosion of stream banks which serve as a protective barrier for wetlands

The City subsequently 1) replaced the damaged soccer fields; 2) removed the debris and sediment and; 3) rebuilt the stream banks to reduce the impact of future floods and to protect the existing wetlands. FEMA previously approved a reimbursement of \$418,000 (which is already budgeted) to cover the initial estimated cost of clean-up and repairs. The actual cost for replacing the field replacement and clean-up the debris, however, ended up totaling \$1,199,062, leaving a balance of \$781,062 for which the City has requested an additional reimbursement.

The cost over run occurred in the following areas:

- The replacement of the artificial turf on the soccer field cost was almost double the original turf cost.
- Debris clean-up of the greenway was more extensive than originally planned.
- Protection of the wet land was not in the original estimate.

This budget amendment in the amount of \$781,062 is necessary to replenish city funds that have already been spent for the additional debris clean-up and wet-land protection costs and to allow the City to pay the contractor (who has yet to be paid) for the replacement of soccer fields. FEMA site co-coordinators are recommending reimbursing the City for \$597,473 of the total additional amount (pending proof of expenditure and final approval from FEMA) to cover the soccer fields and some of the additional clean-up costs, but are not recommending reimbursement for protection of the wetland; rebuilding river bank to help prevent damage from future flooding; and removing debris on the greenways and park which was not developed prior to the storm. They have concluded that these costs fell outside of the FEMA guidelines for reimbursement. An appeal will be prepared and sent to FEMA for reconsideration of the aforementioned denial. In the meantime, the balance not covered by FEMA (\$183,589) will come from the City's fund balance.

Pros:

- This will allow the City to pay the contractor for the soccer field and replenish the Azalea road project budget for additional clean-up expenditures in incurred.

Cons:

- Failure to approve the amendment will prevent the completion of the original project.

Staff recommends approving the budget amendment in the amount of \$781,062 to be funded with anticipated reimbursements from FEMA grant and a transfer of funds from fund balance.

Councilman Mumpower was personally frustrated by the amount of money involved and was concerned that it cost twice as much to replace the turf. He could not support this budget amendment.

Upon inquiry of Councilwoman Cape, Chief Financial Officer Ben Durant explained the process to date and the reasoning why the cost of the replacement turf was so high.

Upon inquiry of Councilwoman Cape, Mayor Bellamy explained that the City Manager has the authority to sign change orders up to \$50,000; however, as a courtesy, City Manager Jackson brings change orders to Council when they are over \$25,000.

Upon inquiry of Mayor Bellamy, Chief Financial Officer Durant said that he would provide Council with a written response regarding the FEMA housing assistance for Hurricane Katrina evacuees.

Councilman Freeborn moved for the adoption of Ordinance No. 3395. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**ORDINANCE BOOK NO. 23 – PAGE 96**

**RESOLUTION NO. 06-179- RESOLUTION ACCEPTING LAND KNOWN AS OWENS-BELL PARK FROM MOUNTAIN HOUSING OPPORTUNITIES AND APPROVING THE NAME OF OWENS-BELL PARK**

At the request of Mayor Bellamy, Councilman Freeborn moved to excuse Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Davis and carried unanimously.

At this time, Mayor Bellamy turned the meeting over to Vice-Mayor Jones.

Summary: The consideration of a resolution authorizing the Mayor to accept a donation of real property on Owens-Bell Lane and naming said park "Owens-Bell Park."

The City of Asheville is interested in establishing and maintaining parks and greenway systems throughout the corporate limits of the City of Asheville. Mountain Housing Opportunities, Inc. (MHO) has offered to donate an approximately 0.85± acre parcel on Owens-Bell Lane (PINs 9648.05-08-7526 and 9648.08-08-6523) to become part of the City's parks and greenway system.

The subject property lies between Clingman Avenue, Rector Street and Owens-Bell Lane. It is transverse by a constructed storm water wetland. Using a series of wetland pools and aquatic plants to slow and filter peak water flow, this system enhances water quality while providing an attractive amenity for the park. The wetland will present an opportunity for educating the

community about the environment as well as storm water mitigation. The park has been improved with a paved trail and landscaping. It is sloping and grassy and the banks of the wetland area are planted with low maintenance plants. It is in a residential area making it an attractive location for passive recreation. The estimated value of the land is \$29,700

Pros:

- The improvements to the park have been installed by the donor.
- The park will preserve green space and storm water wetland in perpetuity.
- It is an efficient use of resources both public and private, because the City will own only the property best suited to the greenway and storm water wetland.
- A park in this general area was shown in the WECAN Master Plan (published in 2001).

Cons:

- The City will incur the cost of maintaining the park at an approximate cost of \$2,500 per year.

City staff has on file a Phase I Environmental Site Assessment which states: "Based on the results of our Phase I ESA, there is no documented evidence of any environmental incidents on the subject site." The Parks and Recreation staff have reviewed the proposed donation and found that the property is appropriate for the parks and greenways system.

City staff recommends adoption of the resolution authorizing the Mayor to accept a donation of real property on Owens-Bell Lane and naming said park "Owens-Bell Park."

Councilman Freeborn moved for the adoption of Resolution No. 06-179. This motion was seconded by Councilwoman Cape and carried unanimously.

At this time, Vice-Mayor Jones turned the meeting back over to Mayor Bellamy.

**RESOLUTION BOOK NO. 30 – PAGE 121**

**RESOLUTION NO. 06-180- RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LEAGUE SOCIAL AS A PART OF THE ASTON PARK TENNIS CENTER**

Summary: The consideration of a resolution making provision for the possession and consumption of malt beverages and/or unfortified wine at a league social as part of the Aston Park Tennis Center Enhancement campaign on October 13, 2006, at the Aston Park Tennis Center.

The Asheville Parks and Recreation will produce the fundraising event to help raise funds to support the cost of renovations at Aston Park Tennis Center. The event will be held at the Aston Park Tennis Center.

The Asheville Parks and Recreation staff recommends adoption of the resolution making provision for the possession and consumption of malt beverages and/or unfortified wine at a league social as part of the Aston Park Tennis Center Enhancement campaign on October 13, 2006, at the Aston Park Tennis Center.

Councilman Newman moved for the adoption of Resolution No. 06-180. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Mayor Bellamy voting "no."

**RESOLUTION BOOK NO. 30 – PAGE 122**

**III. PUBLIC HEARINGS:**

**A. ORDINANCE NO. 3397 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 1155 TUNNEL ROAD AND A PORTION OF 7 GRANDVIEW PLACE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT AND COMMUNITY BUSINESS I DISTRICT TO COMMUNITY BUSINESS I DISTRICT/CONDITIONAL ZONING TO CORRECT A NON-CONFIRMING PARKING LOT**

Mayor Bellamy said that this public hearing was held on September 26, 2006, and continued to this date to see if the developer and City staff could work out a reasonable alternative to the existing parking lot violation.

Assistant Planning & Development Shannon Tuch said that on September 26, 2006, the City Council voted to continue



consideration of the 7 Grandview Place Conditional Zoning request to allow the applicant and his engineer the opportunity to work with staff on a reasonable alternative to the existing parking lot violation.

In the intervening week, staff has spoken with the engineer for the project and has worked out an alternative that can be accomplished in conjunction with the work that must be completed to correct the current stormwater violation. The portion of the parking area directly behind the bakery must be demolished to allow access to a sub-standard stormwater pipe and for some other stormwater improvements. Staff has proposed to withhold repaving the area in question to allow for an attractive landscaped island that may also contain some small café tables for patrons of the bakery. This alternative will result in the loss of 4 parking spaces for a total of 18 spaces (1 space more than what was originally approved).

Some considerations that staff has identified include:

- Reduces impermeable surface area of the parking lot
- Provides an attractive outdoor seating area for the patrons
- Does not require the reconstruction of any retaining walls or the parking lot
- Provides ample parking for the bakery
- Will require rezoning the portion of the parking lot that falls within the residential zoning

City staff does feel this alternative result in a more compatible and appropriate solution to the existing parking lot violation.

Mr. Steve Aceto, attorney representing the owner and developer, spoke in support of the alternative site plan and urged Council to support this conditional zoning request.

Upon inquiry of Councilman Mumpower, Mr. Dennis Ponder, engineer for the developer, said that the alternative plan will cost approximately \$2-3,000 more, however, in his opinion, the bond to the City will cover these modifications. He did feel this will be an amenity to the neighborhood.

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

Councilwoman Cape moved for the adoption of Ordinance No. 3397, to conditionally zone property located at 1155 Tunnel Road and a portion of 7 Grandview Place from RS-8 Residential Single-Family High Density District and Community Business I District to Community Business I District/Conditional Zoning, and approval of the alternative site plan, subject to the following conditions: (1) The project shall comply with all applicable technical standards; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures and directed away from adjoining properties and streets; (3) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; and (4) A lot recombination shall be completed to allow for a conforming buffer; recommend against alternative compliance, noting that the request is reasonable based on information provided in the staff report. This motion was seconded by Councilman Mumpower and carried on a 6-1 vote, with Councilman Freeborn voting "no."

#### **ORDINANCE BOOK NO. 23 – PAGE 100**

#### **B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL USE PERMIT MASTER PLAN FOR INGLES LOCATED AT 1875 HENDERSONVILLE ROAD TO AMEND THEIR MASTER PLAN FOR ALLOWANCE OF A THIRD DRIVEWAY TO ACCESS AN OUT-PARCEL TYPE USE OF A GAS STATION AND CONSIDERATION OF MODIFICATIONS TO A FRONT SETBACK FOR A PROPOSED OUT PARCEL**

Mayor Bellamy said that City staff has requested this public hearing be continued to November 14, 2006, as the petitioner was unable to make adjustments to the site plan in enough time to have City staff review them. Therefore, Councilwoman Cape moved to continue the public hearing until November 14, 2006. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Freeborn voting "no."

#### **C. PUBLIC HEARING TO CONSIDER CLOSING A PORTION OF AN UNOPENED RIGHT-OF-WAY LOCATED OFF OF MONTFORD AVENUE**

#### **RESOLUTION NO. 06-181 - RESOLUTION PERMANENTLY CLOSING A PORTION OF AN UNOPENED RIGHT-OF-WAY LOCATED OFF OF MONTFORD AVENUE**

At the request of Councilman Newman, Councilwoman Cape moved to excuse Councilman Newman from participating in

this matter due to a conflict of interest. This motion was seconded by Vice-Mayor Jones and carried unanimously.

At 5:54 p.m., Mayor Bellamy opened the public hearing.

Assistant Director of Public Works Richard Grant said that this is the consideration of a resolution permanently closing a portion of an unopened right-of-way located off of Montford Avenue. This public hearing was advertised on September 15, 22, 29 and October 6, 2006.

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

Pursuant to this statute, Mr. Brownie Newman has requested the City of Asheville permanently close to the public a portion of an unopened alley way off of Montford Avenue as shown as "alley (unopened)" on the plat recorded in Plat Book 79, Page 87 in the Buncombe County Register of Deeds.

Public Works Department staff has researched and determined that this unopened alley is not a City maintained street. Closure of this unopened alley will not deny any of the abutting properties a reasonable means of ingress or egress. The two parcels that abut this section of alley are identified as PIN Nos. 9649-13-03-2964 and 9649-13-04-2004. Both abutting property owners have joined in signing the petition for the closure. There have been no objections to the closing.

There will be retention by the Metropolitan Sewerage District of a 20-foot wide permanent easement for the operation and maintenance of a public sewer line and also retention by the City of Asheville of a permanent 10-foot wide easement for the operation and maintenance of a public water line.

The closure of an unopened alley is a routine process performed by the Public Works Department.

Pros:

- The closure allows the property to be used to its maximum potential.
- There will be no future compromise of ingress/regress to other property

Cons:

- In consideration of the location of the unopened alley, staff can find no potential challenges regarding the closure of the alley.

City staff recommends that City Council adopt the resolution permanently closing a portion of the unopened alley off Montford Avenue.

Upon inquiry of Councilman Mumpower, Mr. Grant said that the two abutting property owners will split the ownership of the alley, each receiving 7.5 feet.

Upon inquiry of Councilman Mumpower, Mr. Grant explained the process by which petition closings are investigated by the City.

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

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

Councilman Freeborn moved for the adoption of Resolution No. 06-181. This motion was seconded by Councilwoman Cape and carried unanimously.

**RESOLUTION BOOK NO. 30 – PAGE 123**

**IV. UNFINISHED BUSINESS:**

**V. NEW BUSINESS:**

- A. RESOLUTION NO. 06-182 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO PROVIDE THE CITY WITH THE OPTION OF UPGRADING TO DECORATIVE TRAFFIC SIGNAL POLES**

**ORDINANCE NO. 3398- BUDGET AMENDMENT FOR THE UPGRADE OF THREE DOWNTOWN TRAFFIC SIGNALS WITH DECORATIVE POLES AND ARMS AS FOLLOWS: (1) BROADWAY AND COLLEGE STREET; (2) BROADWAY AND PATTON AVENUE; AND (3) COLLEGE STREET AND CHARLOTTE STREET**

City Traffic Engineer Anthony Butzek said that this is the consideration of a resolution authorizing the Mayor to enter into an agreement with the N.C. Dept. of Transportation (NCDOT) to provide the City the option of upgrading to decorative traffic signal poles; and the consideration of a budget amendment for the upgrade of three downtown traffic signals with decorative poles and arms.

In 2005, a public workshop was held in order to gather input regarding how our traffic signals should look. Options were presented for color, pole shape, and decorative base style, and strong feedback allowed us to designate a preferred style for signal poles. NCDOT is installing this preferred style in three locations near Broadway & Woodfin Street as part of the interchange construction currently underway.

Decorative poles are desirable at gateways, key locations or corridors of visual importance, as parts of a streetscape, and places with significant pedestrian activity.

The NCDOT is currently planning to replace traffic signal poles at three locations (College & Broadway, Patton & Broadway, College & Charlotte). They have given the City the option of upgrading the planned replacement of standard metal poles and arms to decorative poles and arms in our preferred style. The City would pay the cost differential of the decorative upgrades, estimated as \$10,000-20,000 per intersection (full signal replacement costs are estimated at \$100,000-150,000 per intersection).

The cost differential of the upgrades is being determined. It is initially estimated at:



Patton & Broadway is our city's central intersection, and College & Broadway is a key downtown intersection. College & Charlotte is a key gateway intersection to our downtown. All three locations are important components of the look of our downtown. This is a one-time opportunity at each location to make major aesthetic upgrades at a relatively low cost.

This agreement defines the format for how such replacements will take place for these and all future replacements. The City will be given a specific cost estimate for the upgrade of each specific location. We will then have 30 days to decide whether to advance each specific project and reimburse NCDOT for the difference, or to allow NCDOT to proceed with standard poles.

Pros:

- Signing of this agreement provides a mechanism to consider decorative upgrades.
- Decorative upgrades are a key part of developing an attractive downtown environment.
- Decorative poles will match those going in at Broadway & Woodfin and those selected by the public.
- Decorative poles will improve downtown's streetscape and complement the new Pack Square Park and College Street projects.
- NCDOT has agreed to replace these poles in part to complement the other improvements we are making downtown, and this contribution supports this partnership.
- Decorative upgrades are a key part of developing an attractive downtown environment.

Cons:

- While the cost is minimized when upgrades are made as signals are replaced, the cost is still significant.

City staff recommends adoption of the resolution authorizing the Mayor to enter into an agreement with the NCDOT to provide the City the option of upgrading to decorative traffic signal pole and authorize a budget amendment for decorative traffic signal poles at these three key intersections.

Mr. Fred English felt that the City needs its roads paved and not decorative traffic signal poles.

Rev. Christopher Chiaromonte urged Council to use this money to invest in two jail-style public restrooms in the

downtown area.

Councilwoman Cape liked the decorative poles but was concerned with the additional cost. She suggested contacting some of our partners, e.g., Tourism Development Authority (TDA) to see if they would be interested in contributing to this since they are interested in supporting the gateway projects.

In response to Councilman Mumpower, Mr. Butzek explained why the traffic signal poles are being replaced and their time span.

Councilman Davis felt this is a good opportunity for a replacement with decorative poles. He agreed with Councilwoman Cape in that this is part of the aesthetics of downtown and there has been an interest in Wayfinding and signage by the TDA. He felt this is a good opportunity to use some dollars generated by tourism to help with citizens pay for that infrastructure.

There was a brief discussion, initiated by Councilwoman Cape, about having 30 days to decide whether to advance each specific project.

Vice-Mayor Jones, liaison to the TDA, said she would be happy to carry this request to the TDA at their next meeting. Her sense is that there is a lot of openness for investments in this, but there is a whole process for allocating dollars. She felt this might be a good sign of the City's small investment to show good faith to the TDA, who will be investing a lot of money in a lot of other needs.

At the suggestion of Mayor Bellamy, and the concurrence of Councilman Davis, Chair of the City Council Planning & Economic Development Committee, it was the consensus of Council to add an agenda item to the Committee's next meeting to develop a list of people and organizations who may have an interest in this effort and then send them a letter seeking contributions.

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. 06-182. This motion was seconded by Councilman Freeborn and carried unanimously.

A brief discussion was held about postponing the budget amendment for two weeks to see if any individuals or organizations would like to contribute.

Councilwoman Cape noted the number of Wayfinding and city enhancements the City is doing regularly so we need to continue that conversation with other individuals and organizations for assistance. Mayor Bellamy also noted that the City isn't just waiting for assistance from the private sector but moving forward.

City Attorney Oast said that even if Council commits to spending the money, it doesn't stop the City from soliciting participation by other partners and then amending the budget to reimburse the City for any funds that are forthcoming.

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

Because City Council can adopt a budget amendment if other funds become available, Councilman Davis moved to adopt Ordinance No. 3398, with an emphasis on soliciting funds from other individuals and organizations. This motion was seconded by Councilman Freeborn.

Councilman Mumpower felt there was not urgency in this and felt Council should wait two weeks before considering the budget amendment.

Councilman Newman felt decorative traffic signals are nice, but when he thinks about the financial responsibilities and key infrastructure that we already have in terms of downtown, in particular the Civic Center, he thought that other people might need to lead on things of this nature.

The motion made by Councilman Davis and seconded by Councilman Freeborn carried on a 5-2 vote, with Councilman Mumpower and Councilman Newman voting "no."

**C. RESOLUTION NO. 06-183- RESOLUTION APPOINTING A MEMBER TO THE CRIMESTOPPERS BOARD OF DIRECTORS**

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Crimestoppers Board of Directors.

Ms. Nancy Ray Durham has not met the attendance requirements and therefore there exists a vacancy until June 30, 2008.

At the September 19, 2006, City Council instructed the City Clerk to arrange interviews for William Price and David Herbert. Mr. Herbert was unable to attend the interview.

In addition, at the September 19, 2006, worksession, City Council instructed the City Attorney to determine if the City Council seat could be changed to just an at-large member. City Attorney Oast reported that the by-laws of the Crimestoppers of Asheville-Buncombe Inc. specifically state that one member must be a member of City Council.

After Council spoke highly of the candidates, William Price received 4 votes and David Herbert received 3 votes. Therefore, William Price was appointed as a member to the Crimestoppers Board of Directors to fill the unexpired term of Ms. Durham, term to expire June 30, 2008, or until his successor has been appointed.

At the suggestion of the Boards & Commissions Committee and the consensus of City Council, City Attorney Oast was instructed to send a letter to the Board of Directors of Crimestoppers of Asheville-Buncombe Inc. asking them to revise their by-laws by amending the requirement that the City Council seat be an at-large City Council appointment and to report back to Council their response.

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**VI. OTHER BUSINESS:**

**A. CLAIMS**

The following claims were received by the City of Asheville during the period of September 14 - October 5, 2006: Sherlee Ward (Sanitation), N.C. Dept. of Administration (Streets), Janice Burleson (Streets), James Charles Oliver (Police), Jennifer K. Godfrey (Transit Services), BellSouth (Water), Ben Halligan (Parks & Recreation) and Ronnie Hoglen (Parks & Recreation).

These claims have been referred to Asheville Claims Corporation for investigation.

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Mr. Gene Hampton was of the opinion that we must stop supporting a culture which encourages our children to deny the truth that we are one and teach spiritual education.

Rev. Christopher Chiaromonte urged Council to build two jail-style public restrooms in the downtown area.

Mr. Fred English stated that people want highways and they should not be toll roads since residents already pay numerous taxes and licenses.

Ms. Heather Rayburn, representing the Mountain Voices Alliance, presented City Council with research on the steep slope ordinance.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 6:37 p.m.

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CITY CLERK

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MAYOR