

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

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

A. AWARD

Ms. Susan Roderick, representing Quality Forward, presented the City of Asheville and the Transit Commission with the Hall of Fame Award for working together to increase transit ridership through the Ride for Free Program, the beautification of the Transit Center on Coxe Avenue, and adding bus benches and shelters.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "E", "F", and "G" were removed from the Consent Agenda for discussion and/or an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 24, 2006

B. RESOLUTION NO. 06-__ - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR INSTALLATION OF A SIDEWALK ALONG PATTON AVENUE FROM REGENCY PARK BOULEVARD TO LEICESTER HIGHWAY

Summary: The consideration of a resolution authorizing the Mayor to execute a municipal agreement with the N.C. Dept. of Transportation (NCDOT) for installation of sidewalk along Patton Avenue from Regency Park Boulevard to Leicester Highway; and the associated budget amendment, in the amount of \$150,000, to accept the funds from the NCDOT.

The NC DOT has agreed to pay the City of Asheville \$150,000 toward the installation of sidewalk on the north side of Patton Avenue from Regency Park Boulevard to Leicester Highway. The total cost of the project is \$450,000. City Council recently approved the \$300,000 City match as part of the \$2.5 million mid-year appropriation for high priority capital projects.

Patton Avenue is a high volume corridor that serves as a major transit route. Several pedestrians use this route as is evidenced by the worn paths in the grass. This sidewalk is a high priority on the Pedestrian Thoroughfare Plan. The City is in the process of finalizing the design of the sidewalk. We anticipate beginning construction on the sidewalk in spring 2007.

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As part of this agreement the City will be responsible for maintaining the sidewalk which is standard operating procedure for all sidewalks on State maintained roadways.

Considerations:

- This sidewalk has been identified as a high priority on the Pedestrian Thoroughfare Plan and is located on a major transit route.
- Due to increase in construction costs over the past four years, the cost of the sidewalk has increased significantly.

City staff recommends City Council authorize the Mayor to execute a municipal agreement with the NCDOT for installation

of sidewalk along Patton Avenue from Regency Park Boulevard to Leicester Highway and approve the associated budget amendment, in the amount of \$150,000, to accept the funds from the NCDOT.

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C. ORDINANCE NO. __ - BUDGET AMENDMENT TO ACCEPT THE N.C. DEPT. OF TRANSPORTATION FUNDS FOR INSTALLATION OF A SIDEWALK ALONG PATTON AVENUE FROM REGENCY PARK BOULEVARD TO LEICESTER HIGHWAY

Summary: See Consent Agenda Item "B" above.

ORDINANCE BOOK NO. 23 - PAGE

D. RESOLUTION NO. 06-__ - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE AGREEMENT WITH FAMPROP, LLC, FOR SHARED USE OF A PARKING LOT AND DRIVEWAY ON CITY-OWNED PROPERTY ON FAIRVIEW ROAD

Summary: The consideration of a resolution authorizing the City Manager to execute a License Agreement with Famprop, LLC, for shared use of a parking lot and driveway on City owned property on Fairview Road.

The City of Asheville owns property in Oakley known as Oakley Murphy Park identified as PINs 9657.06-7385 which parcel is currently zoned RS-8 Residential Single-Family High Density District. The parcels are improved with a Police Resource Center, tennis courts, ball field, parking and driveway. There is parking available for 30+ vehicles. During normal business hours the parking spaces are mostly empty as there is little recreational activity then, while after hours the spaces generally are filled as the recreation facilities are utilized

Famprop has acquired property at 723 Fairview Road adjoining the City's property which it proposes to renovate for office space for Families Together, Inc., a for profit mental health services provider operating in Western North Carolina. Off-street parking for about 25 cars will be required. Famprop has land on which a parking lot could be constructed; however, that part of the land is currently a green area which provides a natural buffer to the adjoining park. Since the parking lot on the City's property is readily accessible to Famprop's property and the lot is largely unused during the times that Families Together would need parking, it is an efficient and environmentally responsible use of existing infrastructure for Families Together to share the City's parking lot.

On October 24, 2006, City Council approved a resolution directing the City Clerk to publish a Notice of Intent with regard to a proposal from Famprop to enter into a license agreement for the use of the parking spaces and driveway on a non-exclusive basis and

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authorizing the City Manager to sign a rezoning application. The City Clerk published a Notice of Intent in connection with the proposed license agreement on October 27, 2006, in the Asheville Citizen-Times.

The license agreement would provide for an annual fee of \$3,000 for a term of three (3) years. In order for Famprop to use the parking spaces it will be necessary for the City's parcels to be rezoned Office District.

Pros:

- The City will receive revenue that it does not currently receive.
- Parking spaces that are currently vacant during business hours will be used.
- It is an efficient use of existing infrastructure to satisfy parking standards.
- Green space will be preserved instead of being converted to parking.
- The impact on storm water runoff that would be associated with a new parking lot is eliminated.

Approval of the resolution will authorize the City Manager execute the License Agreement subject to the City's property being rezoned.

City staff recommends City Council adopt the resolution authorizing the City Manager to execute a License Agreement with Famprop, LLC, for shared use of a parking lot and driveway on City owned property on Fairview Road.

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

This item was removed from the Consent Agenda for discussion and/or a separate vote.

F. BUDGET AMENDMENT RECOGNIZING THE RECEIPT OF COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM INCOME IN EXCESS OF THE AMOUNT BUDGETED FOR FISCAL YEAR 2006

This item was removed from the Consent Agenda for discussion and/or a separate vote.

G. RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE STAFF TO EXPLORE THE FEASIBILITY OF CREATING AN INDEPENDENT AIRPORT AUTHORITY GOVERNANCE STRUCTURE

This item was removed from the Consent Agenda for discussion and/or 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 Newman 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 SEPARATE VOTES

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RESOLUTION NO. 06-__ - RESOLUTION AMENDING THE INTERLOCAL AGREEMENT FOR REGIONAL AIR QUALITY PROGRAM - CLEAN AIR COMMUNITY TRUST

Summary: The consideration of a resolution amending interlocal agreement for regional air quality program - clean air community trust

In May of 2000, the City of Asheville and Buncombe County adopted an interlocal agreement to continue participation in a regional air quality program as allowed by State law. The need to do this was created by the withdrawal of Haywood County from the regional agency that had existed for some 30 years. This new agency was approved by the State Environmental Management Commission in July of 2000.

During the years of its existence, the old agency had accumulated a substantial amount of money from permit fees, fines, and other sources. In the agreement establishing the new agency, the Clean Air Community Trust (Trust) was created with the intention that it would be funded from these revenues, and use the money for educational purposes related to reduction of air pollution. The Trust was also to engage in its own fundraising activities, including grants and donations.

At about the same time that the new agency was created, a lawsuit was brought by the county schools and an individual plaintiff against the City, the County and the agency regarding the disposition of those funds. The conclusion of this litigation was that, since the agency's fines were penal in nature, the funds accumulated from collecting those fines were subject to the statutory and constitutional limitation that requires the "clear proceeds" to be paid over to the maintenance of free public schools.

This ruling reduced substantially the money that was available to fund the Trust. Although the Trust has continued to operate, its financial limitations have constrained its activities such that the bulk of its income now must come from fundraising activities. The Trust has been advised that one way to increase its fund raising ability is to expand its governing board membership to allow a broader cross section of the community to participate.

Currently, the Trust board consists of 7 members. Initially, members were to be appointed by the City Council (2) and the County Commissioners (3), with two members selected by the first five. All subsequent appointments are made by the board, but are subject to approval by the Council and Commissioners.

The Trust seeks greater flexibility in structuring itself to generate revenue to fund its activities. However, because the Trust is provided for in the interlocal agreement between the City and County, changing the Trust structure is cumbersome, and involves an amendment to the interlocal agreement, which requires approval by the City Council and County Commissioners.

What the Trust and the Air Quality Agency propose is to amend the interlocal agreement to delete entirely the provisions

relating to the Trust. This would have the effect of allowing the Trust to structure itself in the manner that best suits its purposes, without approval by the City and County. Since the Trust may to some extent still be dealing with public money, coming through the Air Quality Agency, it is recommended that the Agency retain some oversight of the Trust with respect to this money, and language to that effect has been included in the amendment. This requirement is essentially the same as for any outside agency that receives public money from the City.

In addition to the provision regarding the Trust, the Agency has requested some minor amendments of a technical nature regarding the hiring and terms of employment of the Agency Director.

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There is a requirement in the resolution for an accounting of activities since 2000. Since this is an interlocal agreement involving Buncombe County, similar action by Buncombe County would be required in order for the amendment to be effective.

Considerations:

- The financial situation of the Trust is substantially different from what was contemplated at the time of its creation, and there is substantially less public money available to the Trust.
- The Trust activities now require more fundraising than fund management, and the Trust should be allowed to structure itself as needed to suit its purposes.
- With this added flexibility, the Trust should be better able to pursue its mission.
- The Trust will be required to account for any public money received through the Agency.

If Council desires to make this amendment to the interlocal agreement, adoption of the resolution is recommended.

Councilman Mumpower was concerned that the regional foundation from which this committee was created is no longer in place. He questioned the viability of the committee since this body is not able to fulfill their original mission due to charges beyond their control, mainly the funding resources they were going to have.

Councilman Davis spoke in support of the amendments recognizing that the committee does have a place in the community.

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

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ORDINANCE NO. __ - BUDGET AMENDMENT RECOGNIZING THE RECEIPT OF COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM INCOME IN EXCESS OF THE AMOUNT BUDGETED FOR FISCAL YEAR 2006

Summary: The consideration of a budget amendment recognizing the receipt of Community Development Block Grant (CDBG) program income in excess of the amount budgeted in Fiscal Year 2006.

The City's Budget document and Consolidated Annual Action Plan for Fiscal Year 2006 estimated CDBG program income receipts at \$125,000. Because of a high rate of loan pay-offs, \$376,099 was actually received, producing a balance of \$251,099 in unbudgeted program income.

This budget amendment budgets \$160,000 of these additional CDBG funds to the Housing Authority for its Pisgah View Community Services Center, as approved by Council on October 24, 2006, and the remaining \$91,099 to contingency.

City staff recommends that Council approve the budget amendment to allocate \$160,000 in CDBG program income to the Pisgah View Apartments Community Services Center and \$91,099 to Contingency.

Councilman Mumpower felt this budget amendment is a poor investment of precious dollars.

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

ORDINANCE BOOK NO. 23 - PAGE

RESOLUTION NO. 06-__ - RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE STAFF TO EXPLORE THE FEASIBILITY OF CREATING AN INDEPENDENT AIRPORT AUTHORITY GOVERNANCE STRUCTURE

Summary: Said resolution reads "WHEREAS, the Asheville Regional Airport was built by the City of Asheville in 1958 for the benefit of Western North Carolina; and WHEREAS, the Asheville Regional Airport ("Authority") was established in 1979 as a joint governmental agency organized and created by the City of Asheville ("City") and the County of Buncombe ("County"), pursuant to Article 20 of Chapter 160A of the General Statutes of North Carolina for the purpose of maintaining, operating, regulating and improving the Asheville Regional Airport ("Airport"); and WHEREAS, the Airport is a regional asset for all of Western North Carolina that supports economic development through aviation and non-aviation development and provides critical aviation related services; and WHEREAS, the Authority since its creation has been successful in the development and operation of the Airport; and WHEREAS, the Authority has matured into a fully self-sustaining enterprise requiring no local financial assistance for its operations, maintenance and capital programs; and WHEREAS, the ongoing success of the Airport and Authority requires a governance environment that provides for long-term stability and growth; and WHEREAS, the City, County, and Authority desire to explore the feasibility of creating an independent authority governance structure as authorized in north Carolina law. Now, therefore, be it resolved by the City Council of the City of Asheville that the Asheville City Council expresses its support and desire to have staff of the City of Asheville work with Buncombe County, the Airport Authority, and other appropriate entities to explore the feasibility of creating an independent authority governance structure to own, operate, maintain and develop the Asheville Regional Airport which is a key regional asset to all of Western North Carolina."

Upon inquiry of Councilman Mumpower, City Manager Jackson said that the City, Buncombe County and the Airport Authority will work together to evaluate the pros and cons of forming an independent authority. Some reasons to pursue this include (1) the Airport has grown to the point that it operates largely independently today and there are some aspects of their growing business with the Federal Aviation Administration that would be streamlined by being an independent body; and (2) potentially recover the City's investment of approximately \$10 Million (estimate of the acquisition of land to make it possible for the Airport to develop) in the Airport under some reasonable basis of recovery.

Councilman Mumpower felt that the City gave up sewer and we've had water, in many ways, taken away from us. It appears that the things that most cities retain as assets to help define themselves as cities and maintain some control over their destiny, we have a history of handing over to other people.

In response to Councilman Mumpower, City Manager Jackson said that the major benefit that we have in the current arrangement is the direct reporting relationship to Council with the Council appointments to the Airport Authority. The evaluation process would include looking at the best way to continue making appointments and keeping that benefit. He said there are no direct economic benefits to the City under the current arrangement.

Mayor Bellamy explained that the City owns the land the Airport is located on. She was clear that this is not a commitment to move forward, only for us to do due diligence to see if this is the best model in place.

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In response to Councilwoman Cape, Airport Director David Edwards said that he didn't think the study would be a major cost estimate for anyone because this is not an unusual governance model and is used elsewhere in the state. He felt that it would be relatively easy to determine some of the property value issues.

Councilman Freeborn, Chair of the Airport Authority, explained that the \$10 Million figure is the value in today's dollars of what the City put forward. He said that the Airport Authority unanimously supports the exploration of creating an independent Airport Authority.

Upon inquiry of Councilwoman Cape, City Manager Jackson said that the study will consist of a financial analysis of what has been the equity investments in the Airport; what is the financial feasibility of creating an independent authority and the means to move in that direction; and looking at alternative governance models.

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

RESOLUTION BOOK NO. 30 - PAGE

III. PUBLIC HEARINGS:

A. 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 MODIFICATION TO A FRONT SETBACK FOR A PROPOSED OUT-PARCEL BUILDING

ORDINANCE NO. __ - ORDINANCE GRANTING 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 MODIFICATION TO A FRONT SETBACK FOR A PROPOSED OUT-PARCEL BUILDING

Mayor Bellamy said that this public hearing for an amendment to a conditional use permit Master Plan for Ingles located on 1875 Hendersonville Road to amend their Master Plan for allowance of a third modification to a front setback for a proposed out-parcel was originally scheduled on September 12, 2006, but continued several times to this date.

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:22 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

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Urban Planner Alan Glines submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is the consideration of an amendment to the conditional use permit Master Plan for Ingles located on 1875 Hendersonville Road to amend their Master Plan for allowance of a third modification to a front setback for a proposed out-parcel.

He said that the original consideration approved by City Council on January 6, 2006, included a rezoning of a rear parcel to Highway Business to allow for the expansion of the Ingles Market Store (Attachments to City Exhibit 3 - Location Map & Aerial Map). Included with the rezoning was the master plan for the site and the new store. The total square footage for the shopping center was to be expanded by about 40,000 square feet (City Exhibit 4 - Revised Site Plan. During the original review a condition was placed on the project to limit the number of driveways to two drives. These driveways have full movement traffic signals. The developer is requesting a third drive to provide more direct access to the gas station area at the front of the parcel. The driveway will provide additional right-of-way along Hendersonville Road to provide a safe movement into the parking area. The proposal was reviewed by the City Traffic Engineer and was determined to be safe as proposed. The request was considered by the Board of Adjustment to appeal the requirement in the Unified Development Ordinance (UDO) limiting developments to two driveways. The Board of Adjustment approved a UDO variance for the additional driveway at their meeting on May 22, 2006. The plan and configuration for the driveway was reviewed and approved by the N.C. Dept. of Transportation as well. The driveway will have a limited movement for a right-turn-in only. Amending the conditional use permit requires approval by City Council.

The current plan provides about 124,000 square feet of retail space. Construction of the new store and smaller shops is underway now. The latest amendment to the plan is to replace the existing Asian Grill with a new structure labeled 'Shops E' positioned near Hendersonville. The Highway Business District has a 35' front setback from Hendersonville Road (as measured from back curb for streets wider than 45') (Attachments to City Exhibit 3 - Street Side Elevation and Parking Lot Elevation). The building is positioned to relate to the street with sidewalk access from Hendersonville Road to the doors of the building. Ingles is requesting a modification of the front setback by up to 10 feet to improve the relationship of the building to the street. The building provides windows and doorways along both the Hendersonville Road side of the structure and the parking area. The modification request is in keeping with some other new developments in the vicinity of the Ingles (Panera Bread and Gerber Village) which provide a close relationship of the buildings to the street.

As noted on the original staff report, the project will provide a 40' 'no-grade' buffer area at the rear of the store property adjacent to the rear tract and creek. In addition, Ingles will plant an evergreen screen against this 40 foot buffer space and other buffers for adjacent properties. The rear tract zoned Office Business District also provides a self imposed 40' side building setback from neighboring uses for any future development on the site. At the rear of that property a fifty foot wide 'no-clear', 'no-grade' buffer is provided against the single family neighborhood (Attachment to City Exhibit 3 - Tree Plan).

Staff after reviewing the revised plans noted the following minor comments: (1) Two additional street trees are required in front of the gas canopy area near the Mills Gap entrance; and (2) Open space should be specified on the plan (12,400 square feet) and could be made up entirely by the grass area at the front of the store or other areas on the site meeting UDO specifications.

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Section 7-16-2(c) of the UDO states that the Asheville City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
The proposed driveway was reviewed by the N.C. Dept. of Transportation and the City Traffic Engineer without concern with the request. The driveway is not expected to create an endangerment for the community. The remaining site plans and configurations of buildings have also been reviewed by the Technical Review Committee members.
2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
The project area is an existing shopping plaza on a retail corridor. Although some land forms have been changed to provide the new store pad, the existing parking area will provide additional green space and area for tree plantings. Adjacent property owners will be buffered as noted on the plans and the planting list. An emphasis on evergreens in the buffer yards will provide helpful screening.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
The redevelopment of the Ingles Plaza is expected to increase the value of adjoining property in the area. The site will be brought up to code for items covered in the UDO. Neighboring properties will be provided with buffer screening as required by the UDO.
4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The Hendersonville Road area is one of the major shopping and business corridors for the south side of the City. The proposed development and amendments to the plan will be in harmony with the scale, bulk, coverage, density and character of the area. Neighboring properties will be screened as shown on accompanying landscape plans.
5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The Asheville City Development Plan 2025 recognizes the commercial nature of the corridor. Redevelopment of existing sites and making infill improvements of those sites is recommended. The proposal is in keeping with the official plans adopted by the City. The master plan shows a connecting network of sidewalks and the property is on the Asheville Transit line. A bus shelter will be provided on the site as a location to be mutually agreed to by transit officials and developer.
6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The corridor is one of the most heavily traveled corridors in the City. The site has good access to a traffic signal and is located on the bus route. All other infrastructure is in place to manage and facilitate the development.

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7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The third driveway request provides a direct consideration for this standard. The third driveway provides a long

deceleration lane to provide safer speeds for making the turn into the development. The traffic is not expected to be worsened by the addition of the third driveway cut. The other impacts of the development were reviewed by an earlier Traffic Impact Analysis (TIA). The plan was modified to reflect the comments from the TIA

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable because the driveways have been reviewed for safety and design; the site plan has been redeveloped and will integrate the goals of the UDO, including landscaping, site access and sidewalk connections throughout the site, and landscape buffer yards; the building setback modification for Building E will reinforce a more pedestrian scale redevelopment in the area; and in general this retail use of the site is in keeping with the character of Hendersonville Road.

Considerations:

- An existing shopping plaza is being renovated
- The new development will comply with UDO requirements
- The development is in keeping with the scale and character and uses in the surrounding area
- The modified plans including the third driveway have been reviewed for safety and found to be compliant
- The setback modification request for Shop E will not compromise the character of the surrounding area

Staff recommends approval of the site plan and modifications to the third driveway and building setback be approved with the following conditions: (1) Buffer and parking lot landscaping provided as shown in the plan with the addition of two street trees located near the gas canopy; and (2) Open space will be specified meeting UDO requirements.

Mr. Fred English hoped Council not not support this request until an Ingles is built on Tunnel Road in the old Wal-Mart space.

After rebuttal, Mayor Bellamy closed the public hearing at 5:33 p.m.

Upon inquiry of Councilwoman Cape, Traffic Engineer Anthony Butzek said that there will be a 5-foot sidewalk and a 5-foot buffer along Hendersonville Road.

In response to Councilman Freeborn, Traffic Engineer Anthony Butzek felt that the third driveway on Hendersonville Road was important to the traffic flow on Hendersonville Road.

In response to Councilman Newman, Mr. Glines said that a transit stop will be placed on Hendersonville Road in front of the development.

Councilwoman Cape wanted to make sure that the pedestrian amenities along Hendersonville Road will be functioning doors, storefronts and windows.

Vice-Mayor Jones moved for the adoption of Ordinance No. ____, granting an amendment to the conditional use permit Master Plan for Ingles located on 1875 Hendersonville Road to amend their Master Plan for allowance of a third modification to a front setback for a proposed out-parcel; subject to the following conditions: (1) Buffer and parking lot landscaping provided as shown in the plan with the addition of two street trees located near the gas canopy; and (2) Open

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space will be specified meeting UDO requirements; (3) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; and (5) The building orientation on the site and other site improvements must comply with the conceptual site plan presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department. This motion was seconded by Councilman Newman and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER THE ADOPTION OF AN ORDINANCE DESIGNATING THE PROPERTY KNOWN AS THE NATIONAL BANK OF COMMERCE, LOCATED AT 11 CHURCH STREET, AS A LOCAL HISTORIC LANDMARK

ORDINANCE NO. __ - ORDINANCE DESIGNATING THE PROPERTY KNOWN AS THE NATIONAL BANK OF COMMERCE, LOCATED AT 11 CHURCH STREET, AS A LOCAL HISTORIC LANDMARK

Mayor Bellamy opened the public hearing at 5:39 p.m.

Historic Resources Commission Director Stacy Merten said that this is the consideration of an ordinance designating the property known as the National Bank of Commerce, located at 11 Church Street, as a local historic landmark. This public hearing was advertised on November 3 and 10, 2006.

The National Bank of Commerce with a period of significance from ca. 1899-1955 is significant historically for its contribution to the business development of downtown Asheville at the turn of the 20th century. The National Bank of Commerce, which became the First National Bank & Trust Company in 1931, was one of a small number of banks to survive the stock market crash of 1929, later merging first with Union National Bank of Charlotte in 1958 to become First Union National Bank of North Carolina and now merged with Wachovia, one of the largest banking institutions in the Country.

The building is also significant architecturally for its association with prominent Asheville architect Ronald Green, who designed many important buildings in the area including the Longchamps Apartments and the Jackson Building. It is also notable as being one of only a few buildings constructed downtown in the neoclassical style.

The building being designated evolved from three separate buildings. The northernmost built ca. 1899, the center built ca. 1901 and the southernmost building ca. 1906. In 1922 the two oldest buildings were joined creating the bank building. The third building was joined to the other in the 1940's. The designation includes all of the lots historically associated with the property (lots 33, 34 & 35).

This building was covered in 1965 and has since been restored back to its 1922 appearance.

The National Bank of Commerce is listed as a contributing structure in the Downtown Area National Register Historic District.

Designation of this site as a local historic landmark makes the property owner eligible for a 50% reduction in local property taxes. Currently the tax appraisal for the property included in

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the proposed designation is \$2,550,900. If the property is designated as a local landmark the potential tax savings for the property owner, including city, county and school taxes, would be \$14,078.42.

The ordinance designates the National Bank of Commerce as a local historic landmark. The designation includes the exterior of the structure the property on which it is located, and the interior features as identified in the ordinance.

When a property is designated historic, restrictions are placed on the property, and any modification to the land or structure must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County. All improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings. It is important that properties of local significance are preserved and protected for cultural, historic, and economic reasons and for the benefit of future generations.

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

Based upon the foregoing, the Historic Resources Commission recommends that the Asheville City Council adopt an ordinance designating the National Bank of Commerce, located at 11 Church Street, as a local historic landmark. Staff concurs with the recommendation of the Historic Resources Commission for this designation.

Pros:

- A significant property will be recognized for its contribution both architecturally and culturally to the history of the area.

Cons:

- The tax deferral will result in a loss of revenue to the city and county.

Mr. John Dickson, President of Asheville Savings Bank, spoke in support of the designation.

Mayor Bellamy closed the public hearing at 5:46 p.m.

Councilman Mumpower felt that when you take people off the tax rolls, in this case by 50%, that is unfair to the other people who continue to pay taxes. He was also uncomfortable that when people get a significant tax break you take away some of their incentive of their investment in city government and their incentive to participate actively.

Upon inquiry of Councilwoman Cape, Ms. Merten said that the designation does not keep the buildings from being demolished, but can delay demolition for up to a year to allow the local preservation agency to work with owner to find an alternative to preserve it.

In response to Councilman Davis, Ms. Merten said that the landmark status is monitored.

After a short discussion of the process to which designation requests come before City Council, City Attorney Oast said that the process is set out in detail in the N. C. General Statutes and to the extent to which staff can notify Council what is coming forward may be somewhat limited; however, staff will do their best to give Council some advance notice on what is coming forward.

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

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Councilman Newman moved for the adoption of Ordinance No. _____. 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

C. PUBLIC HEARING TO CONSIDER THE ADOPTION OF AN ORDINANCE DESIGNATING THE PROPERTY KNOWN AS THE RANKIN/BEARDEN HOUSE, LOCATED AT 5 WOODLAWN AVENUE, AS A LOCAL HISTORIC LANDMARK

ORDINANCE NO. __ - ORDINANCE DESIGNATING THE PROPERTY KNOWN AS THE RANKIN/BEARDEN HOUSE, LOCATED AT 5 WOODLAWN AVENUE, AS A LOCAL HISTORIC LANDMARK

Mayor Bellamy opened the public hearing at 6:01 p.m.

Historic Resources Commission Director Stacy Merten said that this is the consideration of an ordinance designating the property known as the Rankin/Bearden House, located at 5 Woodlawn Avenue, as a local historic landmark. This public hearing was advertised on November 3 and 10, 2006.

Ms. Merten said that the Rankin/Bearden House, with a period of significance from ca. 1848-1912 is significant culturally as one of the oldest intact frame houses in Asheville and one of the few remaining in Buncombe County. It is also significant for its association with William Dinwiddie Rankin, who was on the Asheville City Council and mayor from 1855-1857; James Eugene Rankin, the eldest son of W. D. Rankin and a prominent Asheville businessman and Civil War veteran; Marcus Josephus Bearden, partner in the Asheville Loan and Construction Company, which was responsible for much of Montford's development; and who in partnership with J.E. Rankin built the first tobacco warehouse in Asheville.

The Rankin-Bearden House is also significant architecturally in that it embodies the distinctive characteristics of two important architectural periods, Greek Revival and Victorian Italianate. The house was significantly altered in 1866 when the original kitchen and servant's quarters were joined with the main house and again in 1899 when the chimneys were moved and the Italianate bay was added.

The Rankin/Bearden House is a contributing structure in the Montford Area National Register District.

The ordinance designates the Rankin/Bearden House as a local historic landmark. The designation includes the exterior of the house and the lot on which it is located, the faux-stone wall on the front of the lot and all of the interior features as identified in the ordinance.

When a property is designated as a local historic landmark, restrictions are placed on the property, and any modification to the land or structure must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County. All improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings. It is important that properties of local significance are preserved and protected for

cultural, historic, and economic reasons and for the benefit of future generations.

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Designation of this site as a local historic landmark makes the property owner eligible for a 50% reduction in local property taxes. Currently the tax appraisal for the property included in the proposed designation is \$505,900. If the property is designated as a local landmark the potential tax savings for the property owner, including city, county and school taxes, would be \$2,792.06.

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

Based upon the foregoing, the Historic Resources Commission recommends that the Asheville City Council adopt an ordinance designating Rankin/Bearden House, as a local historic landmark. Staff concurs with the recommendation of the Historic Resources Commission for this designation.

Pros:

- A significant property will be recognized for its contribution both architecturally and culturally to the history of the area.

Cons:

- The tax deferral will result in a loss of revenue to the city and county.

Mayor Bellamy closed the public hearing at 6:05 p.m.

Upon inquiry of Councilwoman Cape, Ms. Merten explained that the tax reduction can begin regardless of the state of renovation or rehabilitation.

Councilman Mumpower reiterated his concern with the 50% tax break.

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

Councilman Freeborn moved for the adoption of Ordinance No. _____. 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

D. PUBLIC HEARING TO CONSIDER THE REQUEST BY THE ST. DUNSTAN'S COMMUNITY TO CREATE AN HISTORIC PRESERVATION OVERLAY DISTRICT FOR THE ST. DUNSTANS' NEIGHBORHOOD

At City staff's request due to a posting error, Vice-Mayor Jones moved to continue this public hearing until November 28, 2006. This motion was seconded by Councilman Davis and carried unanimously.

IV. UNFINISHED BUSINESS:

A. ADDITION OF PROPERTIES ON EAGLE AND MARKET STREETS TO THE LARGER CITY-OWNED PROPERTY INITIATIVE REQUEST FOR QUALIFICATIONS

Planning & Development Director Scott Shuford said that this is the consideration of a resolution to commit federal loan and grant funds for the redevelopment of property on Eagle and Market Streets.

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This is a consideration of a request from Eagle Market Streets Development Corporation (EMSDC) that the City obligate \$775,369 in CDBG Section 108 loan funds and \$340,000 in Economic Development Initiative (EDI) grant funds for the rehabilitation of property at 17-23 Eagle Street (the Collette Building) and 38 South Market Street (the Del Cardo Building).

These funds were budgeted by Council in April 2004 for an earlier EMSDC project that included construction of an infill building behind the Collette and Del Cardo buildings. That project became the subject of a lawsuit, which delayed the project enough to prevent it going forward.

On April 12 this year, the PED Committee requested interested parties to make fresh proposals for redevelopment in the area, and on September 13 EMSDC presented a "Rehab First" proposal to the Committee, in which it would partner with a group of

local investors: Jay Stewart, Doug Beatty, and David Moore (SBM) to rehabilitate the Collette and Del Cardo buildings, leaving new infill construction for a later, separate phase.

The Committee reviewed the proposal in depth at its October 11, 2006, meeting and recommended that it should be considered by Council, subject to some technical conditions. Staff, EMSDC, and SBM have since met and revised the organizational structure of the project so that most of the conditions are met.

The City received the \$800,000 Section 108 guaranteed loan in August 2003 for the original redevelopment project. Since then, we have repaid to the Treasury a total of \$156,135 in interest and principal repayments. We need to use the loan funds in a project which will generate program income for future loan repayments. There is no time limit on use of the funds and HUD will allow transfer to any eligible project that meets its underwriting criteria.

The \$340,000 EDI grant must be expended alongside the Section 108 loan, not before, and must be fully expended by September 30, 2007 (non-waivable). Unlike the Section 108 funding, it is not transferable to another project, but we can request a revision which does not substantially weaken the project in terms of the factors on which it was originally rated (need, soundness of approach, leveraged resources, etc).

The two buildings will be renovated to provide a total of 13,000 sf of retail and office space. The total estimated project cost is \$2,200,000 or \$169 psf, including acquisition, rehabilitation, and soft costs. The project would not be feasible if it depended wholly on loan financing. Key elements in the financing are therefore the EDI grant, the \$410,000 in acquisition and other costs already met from CDBG grant funds, and an estimated \$500,000 in equity from Historic Rehabilitation Tax Credits. SBM will commit to contributing most of this equity.

EMSDC will retain control of both buildings during the rehabilitation phase, and will employ an experienced development consultant to act as its project manager. At completion, but before occupancy, EMSDC will place the property into a business condominium structure and sell the main floor of the Collette building to SBM for the amount of their tax credit contribution plus an appropriate share of the loan obligation(s). EMSDC will retain ownership of the Del Cardo and the lower level of the Collette.

Staff have closely reviewed the development pro-forma and discussed it with the development partners. Overall, the project appears to be feasible with the proposed financing structure. Risks are identified and discussed below.

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1. There is a risk that HUD will not approve use of the EDI grant for the revised project. In that case, the project may not be able to proceed.
2. The timetable may slip, resulting in the loss of any EDI funds not drawn down from the Treasury by September 30, 2007. The timetable is already tight and any delays from now on will add cumulatively to this financial risk. However, the projected cash flow is sufficiently robust to allow some of the EDI grant to be replaced by conventional financing if needed.
3. As yet, there is no detailed plan for the rehab work. The per square foot costs are estimates based on recent costs for other buildings elsewhere. However, an adequate 20% hard cost contingency has been provided.
4. The rent assumptions appear reasonable based on staff knowledge of downtown rents, although no professional market survey has been presented. The 5% vacancy assumption is low, but the robust cash flow provides some safeguard.
5. Considerable pre-development work has still to be accomplished before construction can start. The following tasks must be addressed simultaneously:

City Tasks

- a. Requesting and obtaining HUD permission for all of the Section 108 and EDI funds to be used on this rehab-only phase of the original project (underway - will take 1-3 months to get a final ruling from HUD);
- b. Updating the Environmental Review
- c. Finalizing the Section 108 loan and EDI grant agreements;

EMSDC Tasks

- a. Completing architectural plans, cost estimates, and bid documents;
- b. Obtaining Park Service approval of the design – for tax credit purposes
- c. Submitting plans for review by Downtown Commission and S. Pack Square Design Review Committee
- d. Completing legal/organizational work for the tax credits;
- e. Carrying out an appraisal of the property
- f. Obtaining commitments for equity and bank financing;

- g. Bidding and selecting the contractor(s);
- h. Completing relocation of the last tenant in the Collette building.

Pros:

- Will rehabilitate vacant buildings and reduce blight on the Block (the Del Cardo, in particular, is a key structure because of its visibility);
- Will greatly increase economic activity on the Block, including opportunities to re-establish African-American owned businesses such as the Ebony Grill;
- Preserves historically-significant structures (especially the Del Cardo).
- Will make use of the EDI grant, which otherwise will be lost
- Will make use of the Section 108 loan, which is not currently costing anything in net interest but represents an opportunity cost;
- Proposal brings in significant private equity.

Cons:

- Risk of project failure due to cost over-runs, to loss of EDI grant funds after timetable slippage, or to higher than anticipated vacancy rates after completion.

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- Consequent risk that part of the Section 108 loan funds will not be repaid, placing the burden of repayment to HUD on the City's CDBG fund.
- Continues a low density development pattern.

Mr. Shuford summarized three possible actions. One would be to approve the rehabilitation project proposed by EMSDC outlined above. Staff's review of the project is that it is doable, has a pro forma that is sound and it complies with the S. Pack Square Redevelopment Plan. The drawbacks to the project would be the limited scope of the project and the very tight schedule necessary to expend the federal funds. Concerns raised are that the project represents a considerable public investment to rehabilitate two low-rise buildings when the rest of downtown is going basically high-rise. So the question is whether the investment will create the necessary incentive for surrounding properties to also redevelop. The second option is to find a way to connect the Eagle-Market Street properties to a larger City-owned property initiative. Council is going through an evaluation of bringing other City-owned properties into the opportunity for redevelopment and through that master developer approach, it may create a situation where these properties will be able to be incorporated into that larger-scale redevelopment possibility and have the potential to affect more properties in The Block with redevelopment. One disadvantage is that the EDI grant will be put in even greater jeopardy than what has been proposed by EMSDC. We can petition HUD for additional time with the EDI grant. He didn't think it would be well-received, but there always is that possibility that we can keep the grant alive and we can reallocate the Section 108 funds to other projects that would comply with the HUD requirements. The last option is an option to take no action and wait for other alternatives to present themselves.

Mr. Darryl Hart, Chairman of the Board of Directors of EMSDC, presented City Council with a letter dated November 14, 2006. He said that they were excited to proceed with the Rehab First Project; however, they do support and welcome their inclusion in the City-owned property RFQ process. They look forward to scheduling a meeting with the Mayor and City Manager to discuss the RFQ process further about how it they will be a part of it.

Mr. Gene Ellison, property owner on The Block, supported the inclusion of his property on Eagle and Market Streets into the RFQ process.

Councilman Davis appreciated the efforts of the EMSDC and the private ownership on The Block.

Councilman Davis moved to include the Eagle and Market Streets property as part of the City's larger RFQ process. He specifically said that this is not to be entangled with the City-owned property, but to be looked at as a part of the on-going process we will begin later this month. This motion was seconded by Vice-Mayor Jones.

Upon inquiry of Councilman Newman about how these properties will interface with the City-owned property located around the City, Mr. Shuford said that the RFQ will be linked to a couple of properties that have a natural connection, but offer the

opportunity for developers to submit their qualifications for a range of properties. He understands that Mr. Hart is suggesting that the EMSDC properties be added to that list. They would not be required to be redeveloped as a component of any other City-owned property, but they certainly are very close to other sites that we do expect to have considerable developer interest, primarily the City Hall parking lots. Because of that, should a major project be pursued for the parking lots and hopefully for the facility along Charlotte Street, we would be in a position to see interest in surrounding properties because of the increase of activity and the economic development that will occur as a result of the development. He feels those properties will benefit from the larger scale development that is likely to occur.

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There was a brief discussion initiated by Councilman Newman regarding the monthly amount spent in interest on the loan payments, resulting in the feeling that there should be a drop dead date. If it means losing the EDI grant, then we lose that grant, but we can put the Section 108 money into something that will happen in the near future.

Upon inquiry of Councilwoman Cape, City Manager Jackson said that at the next worksession City staff will seek Council's guidance on the RFQ. Staff will ask for Council's broad parameters on what they want accomplished and staff will go out and see who is interested in being our partner in moving either some or all of the properties forward, and who can potentially bring some solutions to The Block.

In response to Councilwoman Cape, Mr. Shuford said there is a great risk of losing the \$340,000 EDI grant. Regarding the Section 108 grant, we will lose whatever interest is paid and we may have the opportunity to allocate that Section 108 money to a different project in different area of town, but the goal would be to use that money and the commitment we made to The Block in The Block.

Councilman Mumpower was concerned that the EMSDC brought forward a proposal and then the City changed the course. Mr. Shuford said that the EMSDC is excited about the inclusion in the City-owned property RFQ and we think this is an opportunity for a successful outcome. He noted that it may be time to revisit the original South Pack Square Redevelopment Plan because conditions in Asheville and the downtown have changed since the Plan was adopted.

Mayor Bellamy said that Mt. Zion wants to help, but did not want to tie their property into anything that might have a negative connotation for the Church. They just want to see what happens. She understands that Council wants a timeline on where we want to go with this issue. She feels that City staff needs to apply for an extension of the EDI grant to see if it's possible to use those funds for this development and not lose our commitment of the Section 108 loan funds for the Eagle-Market Street. She personally feels that the City has received \$800,000 of Section 108 loan funds and if we send that money somewhere else, she wants some other loans to come back in that amount for the Eagle-Market Street area, since they were the original community that applied for those funds. She said that Council is supportive of this endeavor whenever it moves forward noting that they will not lose sight of the renovation of The Block.

Councilman Newman explained why he felt that if we put this property into a larger process, he hopes that there is a way we can have some timing cut-off point so that things are not dragging on.

The motion made by Councilman Davis to include the Eagle and Market Streets property as part of the City's larger RFQ process, and seconded by Vice-Mayor Jones, carried unanimously.

At 6:48 p.m., Mayor Bellamy announced that City Council would take a short recess which would include a closed session. Councilman Mumpower then moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11(a)(5); (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 potential litigation. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (3) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided

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that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4). This motion was seconded by Councilwoman Cape and carried unanimously.

At 7:12 p.m., Mayor Bellamy recessed the closed motion to return to the formal meeting, noting that the closed session would continue at the end of the formal meeting.

B. RESOLUTION NO. 06-___ - RESOLUTION AUTHORIZING THE PARKS AND RECREATION DEPARTMENT TO WORK WITH THE WESTERN NORTH CAROLINA DISC GOLF CLUB TO REVIEW THE PLANS OF THE DISC GOLF COURSE UNDER CONSTRUCTION AT RICHMOND HILL PARK

Assistant Superintendent of Recreation Jeff Joyce said that this is the consideration of a resolution authorizing the Parks and Recreation Department to work with the Western North Carolina Disc Golf Club (WNCDGC) to review the plans of the Disc Golf Course under construction at Richmond Hill Park.

On September 12, 2006, City Council unanimously approved having a Disc Golf Course at Richmond Hill Park. Council also voted to remove the ball fields from the original approved plan. In addition, Council directed Parks and Recreation staff to collaborate with the Disc Golf Club to review the plans and to make the Disc Golf Course as environmentally friendly as possible. A meeting was held on September 19, 2006, with staff and James Nichols, course designer, to discuss this process and to develop the timeline for the Council meeting on November 14, 2006.

Staff of the Parks and Recreation Department held two public input sessions concerning the Disc Golf Course. The first meeting was on Sunday, October 8, at Richmond Hill Park to tour the proposed course and to collect input. At the first meeting, 46 suggestions were made, of which close to 90% were incorporated into the newest course revision. These 46 suggestions were reviewed at the second public meeting held on Monday, October 16, 2006. New suggestions were accepted at this meeting. Staff has met with Disc Golf Club members on four occasions on site to make revisions and to try and meet the requests of the public. One of these visits was with Dr. Ed Hauser, a wetlands specialist. Together with staff, James Nichols, and James Wood, Dr. Hauser gave his input on ways to make the course more environmentally friendly. Many of his suggestions have been incorporated into the new design.

The result of the process is the design before Council. This is the fifth revision of the original plan. It should also be noted that there will be operational and maintenance costs associated with the course and other park features as they are developed. Funding for these costs will be incorporated in the Fiscal Year 2007-08 budget process for Council consideration. Costs for the relocation of the course will be absorbed by Parks and Recreation crews, with the assistance of WNCDGC. The material costs are part of the existing budget that has been approved.

Pros:

- Support of the disc golf community (petition with over 800 signatures supporting the course at Richmond Hill)
- WNC Disc Golf Club and City Staff worked hard at making the course as environmental friendly as possible.
- Course to be built at extremely low cost, with many of the materials used from fallen trees on site
- Labor pool from the WNC Disc Golf Club; their desire is to provide most of the work force.
- Disc Golf supporters have compromised several areas to protect the core habitat of the wetland area

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- 9 holes moved out of 600'core habitat area

Cons:

- Some citizens simply do not want any development at Richmond Hill Park and to save it as a no-impact park

City staff recommends City Council adopt the resolution authorizing the Parks and Recreation Department to work with the WNCDGC to review the plans of the Disc Golf Course under construction at Richmond Hill Park.

The following individuals spoke in support of the disc golf course at Richmond Hill Park:

Mr. Ryan Pickens, a founder of the WNCDGC

Mr. James Nichols, member of the WNC Disc Golf Club and Disc Golf Course designer at Richmond Hill Park and other disc golf parks around the country

Mr. John Thelen, a founder of the WNCDGC (handed Council newspaper articles outlining his company's projects in the area)

Ms. Meredith Nichols, Chair of the WNCDGC (handed Council petition containing 575 local and tourists who support disc golf at the Richmond Hill Park)

A supporter for the disc golf course

Mr. Mike Brown, Pisgah Area Southern Off-Road Bicycling Association (also request for the development of a trail network)

at Richmond Hill Park)

Mr. Craig Fender, local business owner and disc golfer

Mr. James Wood (also request to establish an Ecological Advisory Committee; request for conservation easement at Richmond Hill Park; support for trail network; request for restoration of Smith Creek tributary; work with Asheville Botanical Gardens and others for wildlife and bird watching attractions)

Mr. Eric Marks, Asheville resident

Upon inquiry of Councilman Mumpower about the maintenance budget, City Manager Jackson said that we will treat this like any other new facility. The amount will not be significant and we will consider it as part of the overall budget planning. Mr. Joyce also responded that the WNCDGC will also help financially as they have made a tremendous commitment.

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

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

RESOLUTION BOOK NO. 30 - PAGE

C. RESOLUTION NO. 06-___ - RESOLUTION ADOPTING A DOWNTOWN PARKING ACTION PLAN INCLUDING THE SCHEDULE AND FUNDING STRATEGY FOR THE PURPOSE OF PROVIDING PUBLIC PARKING

City Engineer Cathy Ball said that this is the consideration of a resolution adopting a Downtown Parking Action Plan including the schedule and funding strategy for the purpose of providing public parking.

The demand for parking in the downtown sectors of the city continues to grow. Original projections for growth in demand have proved to be too low in the present fiscal year. Parking demand for monthly permitted spaces has reached equilibrium very close to the total sold in fiscal year 2006 in spite of higher rates. From August 14 through September 30 transient parking

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increased at a rate of 10%. Prior to this period, demand was increasing at an annual rate of 2.9%. The total increase in demand for the four months starting July 1 through October 27th has been 6.1%. The Civic Center deck, historically one of the least used facilities, has twice experienced a full condition during the month of October. Other than during events where special event fees apply, this has not happened before. Last year during the month of September the Rankin deck, the most popular deck, experienced full conditions for 8 hours. This September the Rankin deck experienced 45 hours of full condition.

Staff has been evaluating several options for increasing parking in downtown. We have evaluated adding floors to the existing parking garages. While Rankin Street Parking Garage was originally designed to be expanded by two levels, the building code requirements for this structure have changed significantly making this option cost prohibitive.

The best option for increasing parking in the current garages is to demolish the existing garages and rebuild. Staff does not recommend this option until additional parking is available due to the loss of parking during demolition and construction.

Staff has developed a parking program that identifies several projects to increase parking in Downtown Asheville. Staff has limited the Downtown Action Plan to specific tasks that can be tracked for progress and costs. These projects include:

- Pave and landscape parking lot on the North Lexington Avenue.
- Implement monthly parking on Cherry Street.
- Determine the highest and best use of the property the City owns on Haywood Street. This includes working with the private sector to determine if a partnership can be developed to include public parking. (This process may involve a public charette to gain public input.)
- Formulate public/public/private partnerships for multiuse parking facility on Biltmore Avenue and Cox Avenue.
- Evaluate locating a parking facility on the existing surface parking lot the City owns on Rankin Avenue across from the Civic Center.
- Evaluate opportunity for public parking at or near the Senior Opportunity Center.
- Evaluate opportunity for public parking at the Sheriff's Office/Ann Street.
- Determine feasibility of placing a parking facility on North Carolina right-of-way over I-240.
- Participate in the development of the park side development plan to include necessary parking for the City/County

area.

All of these options will be evaluated in conjunction with other Transportation Demand Management (TDM) tools in order to maximize transportation needs and minimize costs and environmental impacts. As part of the TDM evaluation, the staff will look for opportunities to provide park and ride and/or a downtown shuttle system. Additionally, staff will continue to monitor the parking fee structure to comprehensively determine impact on the downtown parking system. Once this Plan has been adopted by City Council, staff will coordinate with the Downtown Commission on the implementation of specific tasks.

We anticipate that the parking fund will contribute approximately \$850,000 to a capital reserve fund this fiscal year. This money will allow us to fund the initiatives listed above. We anticipate that most if not all of this money will be used in debt service for new facilities and maintenance improvements to the existing decks.

In Fiscal Year 2009 the City will have paid the debt service for the Rankin and Wall Street Garages. This will allow an additional \$630,000 to be available for capital improvement funding.

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Pros:

- Will allow staff to begin to move the process of forming partnerships and parking acquisition forward for council's final approval.
- Provide for needed public parking in Downtown Asheville.
- Allow for continued economic sustainability in the area.

Cons:

- Options will require a significant financial commitment. Staff will bring these costs to Council prior to executing any agreements.

City staff recommends adoption of the resolution adopting the following Downtown Parking Action Plan including the schedule and funding strategy for the purpose of providing public parking:

Item	Description	Schedule	Estimated Total Costs*
1	Evaluate adding levels to Rankin Street Parking Garage	Completed	N/A
2	Evaluate demo and reconstruction of existing parking garages	Completed	N/A
3	Evaluation of parking option in the Battery Park area	Completed	N/A
4	Determine highest and best use of the property the City owns on Haywood Street.	By June 2007	Unknown
5	Surface parking on North Lexington	By May 2007	\$15,000
6	Surface parking on Cherry Street	By May 2007	\$25,000
7	Evaluate possibility of new parking lot on Rankin Avenue across from the Civic Center	By June 2007	\$13 M
8	Parking at or near the Senior Opportunity Center	By June 2007	Unknown
9	Parking at or near the Sheriff's Office/Ann Street	By June 2007	Unknown
10	Determine feasibility of locating parking facility over I-240	By June 2007	Unknown
11	Public/Private partnership on Coxe Avenue to include public parking	By June 2007	\$3.5 M
12	Public/Private partnership on Biltmore Avenue to include public parking	By June 2007	\$5 M**
13	Park side parking initiative	On-going	\$10 M**

* Estimated total costs –These costs include previous expenditures and estimated future costs. Due to escalating construction

costs these are subject to change.

** These are subject to change depending on financing options such as tax increment financing. This figure assumes \$20,000 per parking space plus 20% contingency.

Mr. Barry Olen, representing the Grove Arcade Public Market Foundation and the Battery Hill Associates, presented City Council with a copy of his presentation. He reviewed with Council the background of downtown parking along with the business features associated with parking. He proposed a shoppers survey and a business survey to find out exactly what the individual needs are. He suggested working with representatives of retail, residential, office, service, etc.

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through the Asheville Downtown Association and the Grove Arcade Board to add to the survey questions. In conclusion, he reviewed (a) need for additional parking price variation as per convenience; (b) "staged" parking; (c) location of parking garage; (d) possible shuttle from outlying parking garage; (e) retail space as part of garages; and (f) public restrooms.

Dr. Dwight Buckner, President of the Asheville Downtown Association, said that they are planning a parking charette in January of 2007 and hoped the City would participate.

Councilman Freeborn felt that the reality is that we really don't know what our parking needs are since the last time this was reviewed was in 1998. He hoped that the Asheville Downtown Association will work with the TDM Coordinator to aggressively survey employers and shoppers to find out what their real needs are and incorporate that input into this Plan. He also supported the City participating in the parking charette in January.

After a short discussion about the City's plans for the surface parking on Cherry Street, Councilman Newman supported keeping that lot free.

Councilman Mumpower explained why he felt this Plan removes the most viable option for near term relief of our parking problems and that is the parking deck that has been planned for years in front of the Civic Center. He felt it abandons commitments made to business people, the Grove Arcade and others downtown. He felt we are indulging special interests over the community interests. He felt that that with original plan could have been modified. He also felt that we have missed the opportunity to partner with Buncombe County on their two parking initiatives - the proposed parking garage by the Health Department and the proposed parking garage on Coxe Avenue.

Vice-Mayor Jones said that we are actively pursuing working with the County with the idea we are bringing resources to both of their proposed parking garages.

City Engineer Ball said that we are not sure if we can add more public parking on the lot across from the Health Department but we would like to enter into some agreement with Buncombe County to help them manage that and see if it's available for off-hours public parking. However, we are still hopeful we can still add some public parking on that garage. We are still in the very early stages of the proposed parking garage on Coxe Avenue with the opportunity to add public parking.

At the request of Councilwoman Cape, it was the majority of Council's decision to add "Public/Private Partnership on lot next to Health Department to include public parking" as another item to the Downtown Parking Action Plan.

Councilman Davis felt there was a strong indication that the City can partner with Buncombe County for public parking to be included on the proposed garage on Coxe Avenue. He would also support a scaled down version of the original plan for the parking garage in front of the Civic Center.

At the suggestion of Councilwoman Cape, it was the majority of Council's decision to add "Property Scouting for the Future" with an on-going schedule, as another item to the Downtown Parking Action Plan.

Mayor Bellamy said that regarding the parking garage in front of the Civic Center, the reality is that the City doesn't own the key property to build the deck.

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

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Councilman Freeborn moved for the adoption of Resolution No. 06-___. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE

D. OWENS REPORT UPDATE - PRUDENTIAL SIGN; STAPLES; AND GREENLIFE

Assistant City Manager Jeff Richardson said that the purpose of this report is to update Council concerning staff efforts to address community and Council concerns about the Greenlife, Staples and Prudential developments.

Council received a report from Professor Owens of the Institute of Government and directed staff to contact the affected property owners/businesses about what steps might be taken to address the indicated concerns. The following is the result of those staff efforts for each development:

Prudential Sign – This involved an attached sign on the east-facing façade of the building that did not meet code requirements. The business owner has removed the sign in question, replacing it with a conforming sign on the south-facing façade. The site is now in full compliance.

It was the consensus of Council that no further action would be necessary on this issue.

Staples – Staff made a conference call to Staples executives on September 19, 2006, and discussed options for addressing community concerns. The Staples executives requested an opportunity to internally discuss how they might address these concerns and asked for approximately one month to develop some concepts for consideration. The teleconference was followed up with correspondence from staff. We have not had a response from Staples at this time; however, it is his understanding that Staples corporate headquarters will come back to the City with a more detailed response to the concerns that have been previously noted.

Mr. Mike Lewis stressed for the need of enforcement of the Unified Development Ordinance and asked that in any future correspondence with Staples that it be worded that City Council (not the community) is concerned about possible violations and that the violations need to be rectified within a certain timeframe.

Mr. Chris Pelly, President of the Coalition of Asheville Neighborhoods, agreed with Mr. Lewis in that any correspondence to Staples needs to be specific and stress the urgency of the situation. They need to be specifically asked to respond to the violation of setbacks, the size of their signs and the pedestrian amenities. He feels it is time that the City issue a Notice of Violation. The notice would clearly define what Staples must do to become compliant with the Unified Development Ordinance (UDO) and it would also stipulate a timeline by which Staples must come into compliance. Another option for City Council is to require Staples to seek a variance from the UDO standards through the Board of Adjustment appeals process. Either way, City Council needs to provide resolution to this issue.

After a short discussion, it was the consensus of Council to have the Mayor write a letter to Staples, with language that this is a City Council concern, inviting them to attend a near certain date Council meeting and be prepared to address the issues raised, e.g., signs, pedestrian amenities to soften the flat wall in some form of green-screening, etc.

Councilman Freeborn was concerned that the building is not Americans with Disabilities Act compliant.

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At the suggestion of Councilwoman Cape, Mayor Bellamy said that City Council will hold a closed session next week about what our options are with regard to Staples.

Vice-Mayor Jones felt it was important for the community to know that the letter is not the only communication City staff has had with Staples.

Greenlife - Staff reiterated concerns about the effects of the loading dock on the surrounding Maxwell Street community to both the business owners and the property owners.

Mr. John Swann addressed City Council on the short-range and long-range options to address concerns. He handed Council a copy of the receiving/loading dock reconfiguration options. He asked for some clarification on where Council stands on the options.

Using maps, Mr. Swann explained the options stating that he is interested in solving the concerns. One option would be to leave the configuration as is. The pros would be it would be no cost and no disruption of business. The cons would be that it does not address the issue of truck traffic on Maxwell Street; does not address the issue of buffer zone on Maxwell Street; current configuration is difficult for delivery drivers; and current configuration is not adequate for future business growth.

Another option - Intermediate Option #1 would be to move the loading dock to the east end of the building. The pros would be that it removes tractor-trailer traffic from Maxwell Street; allows for the largest (approximately 23 feet) buffer zone along Maxwell Street; and would not affect house or trees at the corner of Maxwell Street. The cons would be that the existing terrain is extremely steep and would require extensive fill and retaining wall; would require new corridor across entire back of building; would trigger requirement for whole-building sprinkler system; would require relocation of offices and/or refrigeration rack and/or walk-in coolers and/or main electrical service; would obliterate Bordeaux entrance to property; truck access is next to impossible with this configuration; would remove access to lower parking lot; would require removal of outside café seating porch; does not address smaller delivery and service truck traffic on Maxwell Street; substantial disruption of business; does not address future business growth; and cost estimate at \$400,000 - \$500,000 or more.

Another option - Intermediate Option #2 would be to rezone the residential lot at the corner of Maxwell Street and Greenlife exit, move or demolish the existing house, grade and pave the lot and realign loading dock. The pros would be that it removes tractor-trailer traffic from Maxwell Street and allows for slightly larger (approximately 7 feet) buffer zone along Maxwell Street. The cons would be that it requires rezoning from the City; requires cooperation of landlord; requires moving or demolition of house; requires removal of two large mature trees; some disruption of business; does not address smaller delivery and service truck traffic on Maxwell Street; does not address future business growth; and cost estimated at \$75,000 - \$100,000.

Another option - Long-Term Option #1 (includes Intermediate Option #2 above) would be to add onto the east side of building (including structured parking), remodel existing café into new loading dock, build loading corridor from new loading dock around coolers to back of building. The pros would be that it removes tractor-trailer traffic from Maxwell Street; allows for larger buffer zone (approximately 13 feet) along Maxwell Street; may not require removal of large mature trees; and addresses future business growth. The cons would be that it requires zoning from City; requires cooperation of landlord; requires moving or demolition of house; may require cutting down two large mature trees; does not address smaller delivery and service truck traffic on Maxwell Street; considerable disruption of business; and cost estimated at \$250,000 - \$300,000 (cost estimate is for reconfiguration of loading facility only and does not include cost for store expansion).

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Another option - Long-Term Option #2 which is to add onto the east side of the building (including structured parking), include loading dock in new construction. The pros would be that it removes all delivery trucks from Maxwell Street; allows for largest (approximately 23 feet) buffer zone along Maxwell Street; and addresses future business growth. The cons would be that it does not address service truck traffic on Maxwell Street; requires widening and/or realignment of Marcellus Street and/or Bordeaux Street; may not be compatible with new residential condominium construction on Bordeaux Street; would require freight elevator and new corridor along entire back of building; would require relocation of offices and/or refrigeration rack and/or walk-in coolers and/or main electrical service; new loading area would take up valuable space that could be used for employee/customer parking; potential for major disruption of business; and most expensive option - cost estimated at \$500,000 - \$750,000 or more (cost estimate is for reconfiguration of loading facility only and does not include cost for store expansion).

Ms. Hilary Stewart said that she rents a house directly across from the Greenlife loading dock and garage area on Maxwell Street. She explained the practical non-stop noise, exhaust fumes and even rats. She questioned why the nosey unpleasant part of the store wasn't put on the other side of the building.

Ms. Elsa Stewart, resident on Maxwell Street, said that Greenlife has extremely bright orange lights that angle into their house. In addition, the garbage area attracts rats. She suggested the garbage area be moved to the other side of the building.

Mr. Reid Thompson, resident on Maxwell Street, felt it was time City Council enforced the laws. He showed Council pictures of the lack of Greenlife's vegetative buffer and also pictures of a tractor trailer truck unloading - not in the loading docks - but unloading on Maxwell Street. In addition, he said that since the City moved the "No Parking" sign, his personal vehicle has been ticketed every time he calls about trucks on Maxwell Street.

There was considerable discussion by City Council of the options Mr. Swann presented and each Council member voiced their ideas, concerns and/or preference. Most voiced support for Long-Term Option #2 with some sort of short-term solution for residents on Maxwell Street.

Mr. Swann said that the maps are not drawn to scale or drawn by anyone with expertise. The next step would be further analysis of all these options and then to take the plan to a professional designer to see if the plan is feasible and that in itself will be expensive. He asked for any help the City could give with that, possibly some economic development funding. If Council is interest in Long-Term Option #2, they will need some technical assistance because no one in his organization has the expertise to plan such a project. He felt that in some ways the City has inadvertently gotten Greenlife into this situation because from their point of view, they went through the entire permitting, review and building process and no one raised a question until the business was opened. He would appreciate anything the City can do to help them address this situation.

At the suggestion of Councilman Mumpower, Mr. Swann said that if they will take into consideration of moving the cooler, which will get them closer to the 20-foot buffer.

When Mayor Bellamy said that the Owens Report specifically states that "it appears that truck traffic should not have been allowed to use Maxwell Street," Traffic Engineer Anthony Butzek said that the City can design some type of structural islands to keep trucks off the street.

Councilman Newman feels that if Greenlife is willing to work with the City in good faith and put some resources forward to look at the different options, we should meet them half way and ask the City Manager to look for which option(s) would be the most workable solution.

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Councilman Davis would like for Mr. Swann to give a little more direction on where he wants to go with his business; and, if we can make it happen, he would be willing to have only our planners work with him.

In response to Councilwoman Cape, Mr. Swann said that few sites in the City are big enough for his business; but the Deal Buick site is not out of the question. However, Greenlife is committed to a long-term lease at the existing site.

At the suggestion of Councilman Freeborn, the majority of Council decided that the next step would be to have Councilman Freeborn and Councilman Newman take a role in this by working with staff, Greenlife and community representatives to get Council's short-term and long-term expectations fully realized and make sure they are in line with reality. The report will be brought back to Council in 30-60 days.

It was the majority of Council's decision to instruct the City Attorney to investigate the issue of issuing tickets to private vehicles on Maxwell Street.

E. STATUS OF ROADWAY IMPROVEMENTS BY TARGET CORPORATION

Traffic Engineer Anthony Butzek said that in 2003, Target was issued a Certificate of Occupancy. They were required to post a bond in the amount of \$350,000 to complete roadway improvements determined to be necessary by the completed traffic study. City staff has subsequently been involved in ongoing efforts to encourage Target to complete the necessary improvements. While progress has been slow, Target now appears to be making good faith efforts to complete the required improvements.

Two specific off-site roadway improvements were required to mitigate Target's traffic impact:

1. Installation of a traffic signal at the intersection of River Hills Road and Circuit City/Pier One
2. Addition of a second eastbound left-turn lane on Swannanoa River Road at S. Tunnel Road

1. Traffic Signal

Metal poles and arms were ordered in summer 2006. Construction of the traffic signal began in September 2006. Work is well underway, and metal poles and arms have been installed. Outstanding items include adjustment of improperly installed arms, reinstallation of signals, wiring and activation of the signal, and repaving and restriping of eastbound River Hills Road approaching the signal. An estimated completion date is being sought.

2. Turn Lane

This portion of the project requires approval of the N.C. Dept. of Transportation (NCDOT) since they maintain Swannanoa River Road, S. Tunnel Road, and Wood Avenue. Target has approval from NCDOT for most of the work, but is still waiting on approval for the necessary modifications to the traffic signal (this approval has to come from Raleigh). Target's contractor was apparently ready to begin work within the past two weeks, but was asked by NCDOT to delay the project until late winter or early spring. The reasons for this included the approaching holiday traffic, and the fact that the work

was starting so late in the year due to Target's inability to get final NCDOT approvals. The difficulty of constructing during cold weather was also a consideration. Given the proximity of the holidays and the impact that ongoing construction would have on the associated traffic,

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staff supports this decision and has requested a start date of approximately March 1. This project is expected to take two to three months to construct.

Based on the current process, it would be reasonable to expect that all work would be completed by the end of May 2007, possibly sooner. Additional information will be provided by staff at the meeting as it becomes available.

In response to Councilman Mumpower about getting improvements completed on a timely basis, Mr. Butzek said that the City staff has already implemented a procedure whereby City staff is more stringent in ensuring that improvements are in place prior to the issuance of a final Certificate of Occupancy.

Upon inquiry of Councilman Mumpower, Mr. Butzek said that it is reasonable to put timetables in place. In terms of the signal, we expect this to be operating before Thanksgiving. With the turn-lane improvements, a March 1, 2007, start date is what the City has requested.

In response to Mayor Bellamy, City Attorney Oast said that we are certainly in a position to state that Target is not in compliance and whatever enforcement that emanates from that we can pursue.

With regard to compliance deadlines, it was the consensus of City Council to instruct the City Attorney to work with Mr. Butzek and Target to come up with an agreement that has real penalties built into it with regard to establishing dates and timelines, with said agreement being voted on by Council on November 28, 2006.

V. NEW BUSINESS:

A. ROCK HILL ROAD SANITARY SEWER REQUEST

City Engineer Cathy Ball said that the purpose of this report is to provide information to City Council on the availability of sanitary sewer on sections of Rock Hill Road as well other areas of the City.

Early this fall, Mr. Author Edington of 236 Rock Hill Road contacted the City requesting information about the location of sanitary sewer adjacent to this residence on Rock Hill Road. Staff informed Mr. Edington that the closest sanitary sewer line to his property was approximately five hundred feet along Rock Hill Road. Mr. Edington's septic system recently failed. He was notified by the N. C. Dept. of Health Services that he could not utilize a septic tank system to dispose of his waste water.

On October 12, 2006, City Council received a petition from Mr. Edington and adjacent residences requesting public sewer service.

After follow up investigation staff was able to determine the following:

- The subject property was annexed into the City in 1983.
- Staff could find no evidence that the City was required to provide public sanitary sewer to properties in this area.
- There are approximately eleven homes in this area that do not have access within 300 feet of their home. (The N.C. Dept. of Health Services requires that homes within 300 feet of a public sanitary sewer system.)
- There are approximately ten areas in the City that contain four or more homes that do not have access within 300 feet to a public sanitary sewer line.

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- The current practice of the City of Asheville for annexation areas is to provide public sewer service within 300 feet to all existing homes in the annexed areas.
- Public sewer service is provided by Metropolitan Sewerage District (MSD). As part of the Consolidation Agreement, MSD does not extend sewer service in the district.

The cost to provide public sewer service to all eleven homes in this area is estimated to cost \$850,000. These costs include design, permitting, easement acquisition and construction. The cost to provide public sanitary sewer service to 236 Rock

Hill Road is approximately \$100,000. These costs include design, permitting, construction and resurfacing the street.

The other areas that do not have four or more residences and do not have public sewer service within 300 feet are included in the table below.

Item	Area	Annexed	Number of Residences	Cost to Provide Public Sewer
1	Sourwood Lane	1973	4	\$745,000
2	Rock Hill Road	1983	11	\$850,000
3	Galloway	1988	6	\$415,000
4	Gashes Creek	1973	34	\$1,440,000
5	Oak Hill	1960	8	\$750,000
6	Spooks Branch	1960	4	\$410,000
7	Oteen Church	1973	7	\$1,050,000
8	Baker	1960	4	\$460,000
9	Beaverbrook	1960	19	\$1,140,000
	TOTAL			\$7,260,000

If Council authorizes staff to move forward on installing public sewer service in the Rock Hill Road area, the design would need to be completed and permits acquired prior to construction. We estimate that construction could begin in the summer of 2007.

Staff recommends that this request be evaluated as part of the annual budget process due to the financial impacts of this decision.

Ms. Helen Edington, resident on Rock Hill Road, said that their septic tanks are failing and since they are City residents, urged City Council to do something as soon as possible.

Mr. James Grant, property owner in the Rock Hill Road area, sought City Council assistance for the homes in the Rock Hill Road area.

Upon inquiry of Councilman Mumpower, Ms. Ball said it was her understanding that the Health Department will not allow a septic tank at the Edington home because the septic field area has become so saturated that it won't allow discharge and therefore it won't pass the test. There is not another location on their property where they can site the septic field that will pass the Health Department's requirement.

In response to Councilman Mumpower, Ms. Ball said the only options are to provide another septic tank system or to provide public sewer service. The option of public sewer service to where the property owner has more flexibility in being able to pay for it is the option of doing a special assessment, but \$850,000 for 11 homes over 5 years is still a lot of money for the homeowners. Also, some smaller apartment complexes have a septic pool if you can find a location.

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Councilman Freeborn was familiar with two types of septic systems, one of which is for land that doesn't percolate. That may be a short-term solution. But, ultimately, these are City residents and we should help. If a special assessment process is used, he would support allowing them to pay over 20-30 years.

Vice-Mayor Jones said that situations like this will be coming forward and perhaps the City, MSD and the affected residents can meet to see how we can plan for this in the future.

Mr. Tom Hardy, representing MSD, reiterated that as part of the 1990 Consolidation Agreement, MSD does not extend sewer service in the district. He recommended doing a little more in depth research on these sites with the Health Department and prioritize and see how bad the sites are, like if the sites are failing. There are other options to on-site systems and you will need to find out what the Health Department will allow in terms of alternate on-site technologies. That may be where we can save some money. If we find that we can't do that and we have to go to public sewer, we will be glad to market our resources as far as engineering and design and that sort of thing to help out. We could do that a lot more efficient than a consultant because we do a lot of rehab and we have engineers in house. Before a budget is estimated, you should survey it, lay it out and then get a tight budget estimate for at least this hot spot. But first, the Health Department should determine how many of the 11 are hot spots and are there on-site systems that could serve that purpose.

Vice-Mayor Jones thanked Mr. Hardy for his offer of technical assistance.

Upon inquiry of Councilwoman Cape, City Manager Jackson said that City staff will be reviewing with Council next week some annexation policies.

In response to Mayor Bellamy, City Attorney Oast explained what services the City provides when an area is annexed.

Upon inquiry of Councilwoman Cape, Ms. Ball said that none of these areas qualify for Community Development Block Grant funds.

Understanding the urgency, it was the consensus of Council to instruct the City Manager to work with MSD and look at all available options and then report back to Council with cost estimates on each option and time frames to make each of those happen on December 12, 2006, with the overall plan for the boarder problems, but report back to Council on November 28, 2006, with a specific plan for the Rock Hill Road immediate problem.

Ms. Ball said that in the meantime, given the urgency of the situation, we may try to see if there is some way to pump the system on a regular basis in order to meet the Health Department Codes so they wouldn't necessarily be in violation. We would have to work with the Health Department to see how quickly that would have to be done to meet their requirements until some other measures are put in place. In addition, City staff will try to get all the people out there to meet together and look at other opportunities. If there is another way to do a different kind of septic system that would work, we would probably try to do that since that would happen quicker than putting in a new sewer line.

B. LEGISLATIVE PROGRAM FOR 2007 SESSION OF THE N.C. GENERAL ASSEMBLY AND THE FISCAL YEAR 2008 FEDERAL PRIORITIES STATE AND FEDERAL LEGISLATIVE AGENDA

City Attorney Oast said that the purpose of this agenda item is: (1) To review significant legislation of interest to municipalities from the 2006 "short" session of the N.C. General Assembly; (2) to review the outcome of Council's legislative requests from 2006; and (3)

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to give the Council an opportunity to begin discussion of issues it may wish to include in a Legislative Agenda for the 2007 Session of the North Carolina General Assembly, and for federal priorities for the upcoming 110th Congress.

In recent conversations the Council has expressed an interest in beginning its development of a legislative program earlier than it has in past years. In recent years, the Council has begun these discussions no sooner than in January or February.

The North Carolina League of Municipalities (NCLM) recently held its Annual Convention in Greensboro.

The following is the new potential legislative initiatives that Council members have noted as of interest. For the Federal Legislative Agenda (1) Illegal Immigration - Support for national and state legislation/resources to address illegal immigration issues at the local level, specifically in respect to criminal behavior and the employment of illegal aliens; (2) Social Security Office Location - Support changes to require that Social Security offices be located on public transportation routes so that all citizens have access to the services provided by the agency; (3) North Carolina Health Choices Initiatives - Support federal legislation securing the necessary funds to continue to insure our children in North Carolina by supporting Senate Bill S. 3913 (Keeping Children Covered Act of 2006); and (4) Minimum Wage - Support raising the federal minimum wage. For the State Legislative Agenda (1) Safety for Children in Public Parks - Support legislation that strengthens the laws regarding the sex offenders and public protection registration programs to protect children in public parks (2) Illegal Immigration - Support for national and state legislation/resources to address illegal immigration issues at the local level, specifically in respect to criminal behavior and the employment of illegal aliens; (3) Chimney Rock - Support creation of Chimney Rock as a new State Park; and (4) Real Estate Transfer Tax - Support North Carolina General Assembly legislative action for an act to authorize Buncombe County to levy an excise tax on instruments conveying real property in Buncombe County.

Initiatives identified by Council currently on the 2006 Legislative Agenda include (1) Criminal Justice System Reform - Support continued legislative review and action as necessary to address criminal justice system funding issues, particularly as they affect Asheville; and (2) Repeal Sullivan Acts - Support repeal of the Sullivan Acts II and III.

Council has an opportunity to (1) identify potential new initiatives; (2) select initiatives for inclusion in a state and federal legislative agenda; and (3) consider how to communicate with our legislative delegation.

Because the 2007 session is a long session, the legislature is not as restricted as in the short session as to the items it may consider. The deadlines for submission of local bills to Bill Drafting, and for introduction in one of the two houses of the General Assembly are typically established during the first week of the session. However, it is not too early to begin discussions with the members of our delegation, before they go down to Raleigh. Some of this discussion can occur at the meetings of the Chamber of Commerce Legislative Task Force, which both Council and City staff regularly attend. The City's legislative program will be reviewed at an upcoming meeting of the Task Force.

City staff recommends that Council discuss its interest in Legislative initiatives for the upcoming session of the North Carolina General Assembly, as well as federal funding priorities for Fiscal Year 2008-09 and what further steps it may wish to take to develop a state and federal legislative program.

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On April 25, 2006, the City Council adopted Resolution No. 06-91, and transmitted it to the members of the General Assembly whose district includes Asheville. The following actions were requested and taken:

1. **Request:** Amendment of the 1993 local act affecting utility franchise taxes paid by CP&L (now progress Energy) and PSNC to include settlement of the litigation arising from the annexation of Progress Energy's Lake Julian facility.
Action: Amendment adopted as submitted.
2. **Request:** Legislative annexation of general properties south of town (at the request of the property owners).
Action: Annexed as requested.
3. **Request:** Consideration of legislation to establish a funding source for the Asheville Civic Center.
Action: No action taken, but a response came from Senator Nesbitt indicating that legislative action would not be appropriate until there had been some preliminary discussion with the delegation, and until the City had resolved its position on the matter.
4. **Request:** Repeal of the Sullivan Acts.
Action: No action taken.

The remaining items in Resolution No. 06-91 were not specific to Asheville:
5. **Request:** Review level of funding to the criminal justice system.
Action: In the law amending the 2006, the following additional positions were authorized and funded:
 - a. District Court Judge seats increased from 7 to 8.
 - b. Assistant District Attorney positions increased from 11 to 13.
 - c. Cap on number of magistrates (previously 15) was removed.
6. **Request:** Support Land for Tomorrow initiative for referendum on issue of State funding (\$1 billion) for public lands. Also supported by the Chamber's Legislative Task Force.
Action: No action taken.
7. **Request:** Oppose efforts to dilute local amendment over cable TV franchise.
Action: A law of statewide application was adopted. Although the law dilutes local authority significantly, some local government concerns were recognized and incorporated into the law prior to adoption. A more detailed report will be provided to Council at a later time.

8. **Request:** Support an increase in the minimum wage to \$7.00/hour.

Action: The minimum wage was increased to \$6.15/hour, effective January 1, 2007.

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We are continuing to gather information about Council's other legislative concerns, and will report our findings.

With regard to the general state legislation of interest items, because 2006 was a "short" session, the potential for major legislative action for affected cities was somewhat limited. Following is a listing of some general laws of interest. Some items are covered in the memorandum dealing with Council's legislative requests.

1. Amendments to "Bill Lee" act. This law enables local governments to identify zones within their jurisdictions, that because of depressed economic conditions, are eligible for tax credits. The law was amended to narrow the criteria for qualification, but expands the businesses eligible for credit.
2. Eminent domain powers. In response to the Kelo v. New London decision from the U.S. Supreme Court, legislation was adopted that narrows the purposes for which local governments in North Carolina can use the power of eminent domain.
3. As reported to Council earlier, local governments were authorized to permit their law enforcement officers to perform the functions of an immigration officer pursuant to a Memorandum of Understanding with a federal agency.
4. Stormwater – Some changes of a technical nature were made to the 2004 law to conform its provisions with regulations adopted by the Environmental Management Commission.

There was other legislation of interest to municipalities; the list set out above is necessarily selective, based on matters that have a direct and potentially significant impact on cities, or with respect to which Council has expressed an interest.

City Attorney Oast urged Council to come to him or Economic Development Director Sam Powers with any requests for legislation. He also suggested that Council begin contacting our legislators now.

C. PRIORITIES FOR FUNDING UNDER THE SURFACE TRANSPORTATION PROGRAM - DIRECT ATTRIBUTABLE PROGRAM (STP-DA)

Metropolitan Planning Organization (MPO) Coordinator Dan Baechtold said that this is consideration of support for using federal Surface Transportation Program – Direct Attributable (STP-DA) money to fund small transportation projects with high priority at the local level. The Metropolitan Planning Organization is in the beginning stages of discussions about programming these funds. The MPO has put out a preliminary "call for projects."

STP-DA – This term refers to a federal funding source for transportation projects. The acronym stands for Surface Transportation Program – Direct Attributable. The term "Direct Attributable" refers to the fact that this is the portion of federal STP funds that are allocated directly to our area, and the amount of the funds can be attributed to the population of our urbanized area.

The Asheville Urbanized area receives about \$2.7 million per year in STP-DA funds. The Asheville urbanized area includes portions of Buncombe, Henderson, and Haywood Counties. The membership of the French Broad River MPO is made up of all the local governments in the three counties.

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The MPO has the option to choose how these funds will be programmed. Through its committees (the Transportation Advisory Committee and Technical Coordinating Committee), the French Broad River MPO could select which projects will be constructed with STP-DA funds. The STP-DA funds can be spent on most types of capital improvements for transportation. Some examples include: road widening, intersection improvements, sidewalks, greenways, bicycle lanes, streetscape and landscaping improvements, crosswalks, and transit capital projects such as purchasing buses, shelters, or benches. The funds can be spent on all aspects of the project including design and the purchase of right of way.

The French Broad River MPO is currently seeking input from local governments to determine high priority local projects that would be good candidates for these funds. The MPO will then enter into discussions with NCDOT to determine a process for

programming the funds in the Transportation Improvement Program (TIP).

At a later date, the MPO will put out a more formal call for projects and determine a method for equitably distributing the funds throughout the region. For this preliminary call for projects, City staff has identified a list of local transportation needs that are either under-funded or have no funding source. This list is in draft form, but will be used as a starting point for discussions at the MPO level.

PROS:

- This funding source provides an opportunity to accomplish small transportation projects in a variety of categories.
- There are many documented local transportation needs that are under-funded.
- STP-DA funds are flexible and can be used for road improvements, sidewalks, bicycle projects, greenways, crosswalks, landscaping, and transit improvements.
- The funding can be used for all aspects of the project including design and purchase of right of way.
- In the past, the regional MPO process for prioritizing projects has been cooperative and successful.

CONS

- This is not new or additional funding. The money is currently committed to other projects in our region. The MPO will need to work with the NCDOT to make adjustments to the TIP to make these funds available for locally selected projects.
- Projects that are locally selected and paid for with STP-DA funds will require a twenty percent (20%) local match.
- The City will be responsible for all aspects of project management, including purchase of right of way, design, and construction. Project management can be complicated and time-consuming and will require additional staff resources.
- Equitable distribution of the funds will require regional cooperation.

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City staff requests Council support the process at the MPO level to program STP-DA funding on the high-priority local projects list developed by staff.

Mayor Bellamy said that she has received a request from a state representative for Council's support on this initiative; however, he does want the MPO to allow the N.C. Dept. of Transportation to define where the money will come from, as opposed to the MPO.

It was the consensus of Council to support the process at the MPO level to program STP-DA funding on the high-priority local projects list developed by staff.

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VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of October 6 - November 2, 2006: G. Bryon Zimmerman (Parks & Recreation), Rhea Cravens (Water), Lee Shepard (Streets), Tom Fisher (Streets), Kara Hastings (Sanitation), James Gregory (Streets) and Edna Stancil (Streets).

The following claims were received during the period of November 3 - 9, 2006: Cue'N Spirits (Water), Kevin Hackett (Parks & Recreation), Marquel Fisher (Sanitation), Belinda Blankenship (Police), Juanita Medford (Sanitation) and Christina Leif (Engineering).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Gene Hampton spoke to Council about the quality of life and the need for quality public education. He said that recently he has received reliable reports that some City departments are not conforming to the requirements of Section 6.2 of ISO 9000 I for quality personnel practices in general and may, in some cases, be in violation of the provisions of Title VI of the 1964 Civil Rights Act. Mayor Bellamy instructed the City Manager to investigate the allegations cited by Mr. Hampton.

At 10:30 p.m., Councilman Freeborn moved to continue the closed session. This motion was seconded by Councilman Davis and carried unanimously.

At 11:00 p.m., Councilman Freeborn moved to come out of closed session. This motion was seconded by Vice-Mayor Jones and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 11:00 p.m.

CITY CLERK

MAYOR