

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

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING AUGUST 14, 2007, AS “BOB CALDWELL DAY”

Mayor Bellamy read the proclamation proclaiming August 14, 2007, as "Bob Caldwell Day" in the City of Asheville. She presented the proclamation and gifts to Mr. Caldwell who briefed Council on some of his retirement plans after being the weather forecaster for WLOS-TV for 41 years.

II. CONSENT AGENDA:

Councilman Mumpower requested Consent Agenda item “B” be removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 24, 2007

B. RESOLUTION AUTHORIZING THE LAND-OF-SKY REGIONAL COUNCIL TO SUBMIT APPLICATIONS TO THE ENVIRONMENTAL PROTECTION AGENCY FOR BROWNFIELDS ASSESSMENT GRANT ON BEHALF OF THE CITY OF ASHEVILLE

This item was removed from the Consent Agenda for an individual vote.

C. RESOLUTION NO. 07-148- RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A MAINTENANCE AGREEMENT BETWEEN THE N.C. DEPT. OF TRANSPORTATION AND THE CITY OF ASHEVILLE TO ALLOW PUBLIC PARKING UNDER A SECTION OF BRIDGE #76 IN THE BILTMORE COMMUNITY

Summary: The consideration of a resolution authorizing the Mayor to execute a Maintenance Agreement between the North Carolina Department of Transportation (NCDOT) and the City of Asheville to allow public parking under a section of Bridge #76 in the Biltmore community.

The Asheville Area Habitat for Humanity, Inc. is located at 30 Meadow Road and they operate a Home Store from this location. In an effort to make sure their limited on-site parking is available for the customers shopping at the Home Store, the current staff parks their vehicles in an area under Bridge # 76. Unfortunately, this parking has come to the attention of the NCDOT and according to their current regulations; they cannot allow parking within highway right-of-way.

In an effort to be helpful, the NCDOT suggested that a maintenance agreement be executed between the City of Asheville and themselves that would give the City permission to use the subject area as a public parking area. Although the City cannot restrict the parking area for the exclusive use of the Asheville Area Habitat for Humanity, it probably would only be used by their staff due to its physical location. In addition, the Asheville Area Habitat for Humanity has asked for the City’s help in resolving this situation.

Pros:

- This action satisfies an existing need for a non-profit agency.
- No funds are needed to construct the parking area.

Cons:

- The City is responsible for maintenance.
- The City assumes liability.

Staff recommends City Council approve a resolution authorizing the Mayor to execute a Maintenance Agreement between the NCDOT and the City of Asheville to allow public parking under a section of Bridge #76 in the Biltmore community.

RESOLUTION BOOK NO. 30 - PAGE

D. ORDINANCE NO. 3510 - BUDGET AMENDMENT TO RECEIVE A DONATION FROM THE CATHEDRAL OF ALL SOULS FOR THE PURCHASE OF BANNERS IN BILTMORE VILLAGE TO BENEFIT THE BILTMORE VILLAGE MERCHANT'S ASSOCIATION

Summary: The consideration of a budget amendment, in the amount of \$3,000, to receive a donation from the Cathedral of All Souls for the purchase of banners in Biltmore Village to benefit the Biltmore Village Merchant's Association.

As part of the Rural Economic Development Center Biltmore Village Grant project, the City plans to purchase new pole banners for Biltmore Village. The \$3,000 donation from the Cathedral of All Souls will be used in conjunction with grant funds to cover the cost of the banners.

Pro: Allows the City to purchase new pole banners for Biltmore Village as identified by the Biltmore Village Merchant's association as a need for Biltmore Village.

Con: None noted.

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City staff recommends that City Council approve a budget amendment, in the amount of \$3,000, to receive a donation from the Cathedral of All Souls for the purchase of banners in Biltmore Village to benefit the Biltmore Village Merchant's Association.

ORDINANCE BOOK NO. 23 - PAGE

E. RESOLUTION NO. 07-149- RESOLUTION OF INTENT TO CLOSE AN UNOPENED PORTION OF TRADE STREET AND SETTING A PUBLIC HEARING FOR SEPTEMBER 11, 2007

Summary: The consideration of a resolution of intent to close an unopened portion of Trade Street and request a public hearing on September 11, 2007 regarding this issue.

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

Pursuant to this statute, Phillip C. Price, on behalf of the adjoining property owners, has requested the City of Asheville permanently close an unopened portion of Trade Street.

Provided Council sets a public hearing, City staff will research and determine the pros and cons of the request. This will include determination of whether the closure affects abutting property owners, transportation plans, greenway plans, utilities, etc.

City staff recommends that City Council approve a resolution setting a public hearing for September 11, 2007, to close an unopened portion of Trade Street.

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F. RESOLUTION NO. 07-150 - RESOLUTION AUTHORIZING THE MAYOR ON BEHALF THE CITY OF ASHEVILLE TO EXECUTE A FEDERAL AVIATION ADMINISTRATION GRANT, 3-37-0005-32

Summary: The consideration of a resolution authorizing the Mayor to approve a Grant Offer from the Federal Aviation Administration (FAA) in the amount of \$4,586,889.00.

The FAA has offered a grant agreement to the Asheville Regional Airport. This grant in the amount of \$4,586,889.00 is for Airport Improvement Program Project No. 3-37-0005-32. This project consists of a terminal renovation and expansion project and other airport improvements.

Staff recommends City Council approve a resolution authorizing the Mayor to approve a Grant Offer from the FAA, in the

amount of \$4,586,889.00.

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G. RESOLUTION NO. 07-151- RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AND SUBMIT A THIRD PARTY RIGHT-OF-WAY ENCROACHMENT AGREEMENT BETWEEN THE N.C. DEPT. OF TRANSPORTATION, THE ASHEVILLE MURAL PROJECT AND THE CITY OF ASHEVILLE

Summary: The consideration of a resolution authorizing the City Manager to sign and submit a third party right of way encroachment agreement between the North Carolina Department of Transportation (NCDOT), The Asheville Mural Project and the City of Asheville.

As part of the logistics for implementation of the Lexington Avenue Gateway Mural, NCDOT requires the City of Asheville to enter into a third-party encroachment agreement with NCDOT and the Asheville Mural Project.

City Council's 2007 strategic goals for Sense of Place, Heritage, and the Arts include "support implementation of public art project on Lexington at I-240 in partnership with the Asheville Mural Project." City staff work to date with the Asheville Mural Project has included: garnering letters of support from the Downtown Commission and the Public Art Board; providing internal and external meeting and contact assistance including a public open house; and providing technical and logistical assistance for the project's implementation.

The Mural start date: September 12, contingent upon the processing of this encroachment agreement by City Council and by the NCDOT, assumption of 4 weeks turn around time total; pressure washing and priming completed by September 18; Phase I (Lexington Avenue section) of mural painting: projected completion by October 24 based on unlimited daytime access, 7 days a week; resume painting for phase II in March 2008 (due to weather); mural complete April 2008

Regarding coordination with adjacent projects, adjacent paving and improvements of newly acquired parking area are also scheduled to begin mid-September; Staff Bruce Black and Richard Grant coordinating.

There is no City funding involved in either the encroachment agreement or the implementation of the mural. A City water truck is being supplied for 1-2 days of pressure washing. Funding for adjacent regeneration of a former NCDOT lot under I-240 into an area suitable for parking (including paving, irrigation, lighting, electric and water service for community festivals) is being funded by parking services.

Staff is asking Council to consider authorizing this agreement that will address the temporary placement of scaffolding (for pressure washing, priming, and painting of the mural surfaces) in the NCDOT right of way. The agreement is necessary because the NCDOT does not enter into encroachment agreements with individuals, only municipalities.

The Legal Department has reviewed/approved the application for Council consideration; the City of Asheville is named as co-insured on Asheville Mural Projects general liability policy through April of 2008. The City of Asheville's Public Works department has agreed to provide traffic control for the encroachment area per MUTDC standards.

Pro: Authorization will support timely implementation of the project.

Con: Some drivers may be inconvenienced due to temporary encroachment of scaffolding.

Staff recommends City Council approve a resolution authorizing the City Manager to sign and submit a third party right of way encroachment agreement between the NCDOT, The Asheville Mural Project and the City of Asheville.

After a brief discussion, Councilman Davis moved to re-visit the small funding request by Asheville Mural Project, along with an update on it, on August 21, 2007 (with Mayor Bellamy's concurrence). This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE

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

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ITEMS PULLED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. RESOLUTION NO. 07-147- RESOLUTION AUTHORIZING THE LAND-OF-SKY REGIONAL COUNCIL TO SUBMIT APPLICATIONS TO THE ENVIRONMENTAL PROTECTION AGENCY FOR BROWNFIELDS ASSESSMENT GRANT ON BEHALF OF THE CITY OF ASHEVILLE

Summary: The consideration of a resolution authorizing Land of Sky Regional Council (LOSRC) to submit applications to the Environmental Protection Agency for a Brownfields Assessment Grant on behalf of the City of Asheville.

Assistance with environmental assessments helps potential investors overcome barriers to brownfield redevelopment. The City of Asheville does not have staff that hold expertise in managing brownfields assessments, however the City has stated strategic goals that would support adopting such a program, for example: the growth, development, and land use goal "promote strategies that encourage sustainable, high density, infill growth"; the economic development goals to "pursue riverfront redevelopment" and to "take a leadership role in intergovernmental relations to support regional economic development". Staff has ascertained that LOSRC has a proven track record in applying for and managing a brownfields assessment program, and that the costs of utilizing their services would be considerable less to the taxpayer than redirecting resources internally or requesting additional funding for a new program.

Application fees to LOSRC for one grant would be \$3500; for both grants \$5000. While there is an additional cost to administer the program if the application is successful, it is eligible to be paid for by the grant.

The River District Design Review Committee heard this proposal at their June 27, 2007 meeting and supports the application.

Council's Planning and Economic Development committee reviewed this item at their July 11, 2007, meeting and asked that it be placed on the next available formal agenda.

Pros:

- City promotes sustainable infill development
- City promotes safety of citizens through potential clean up of hazardous materials in the River District
- City will expand its toolbox of incentives for sustainable development without having to redirect current or direct substantial new resources.

Cons:

- City will incur initial cost of \$3500 - \$5000
- External management of a City of Asheville initiative.

Staff recommends City Council approve a resolution authorizing Land of Sky Regional Council to submit applications to the Environmental Protection Agency for a Brownfields Assessment Grant on behalf of the City of Asheville.

Ms. Kate O'Hara, Director of the Brownfield Assessment Program with the Land of Sky Regional Council, responded to various questions/comments from Councilman Mumpower.

Councilman Mumpower could not support the resolution in that felt that this is (1) not particularly careful with other people's money; and (2) it is a redundant program.

Councilwoman Cape said that she has seen the brownfields initiative as a positive force in other cities to help areas that have been stagnant because of the perceived problems.

Councilwoman Cape moved for the adoption of Resolution No. 07-147. This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE

III. PRESENTATIONS & REPORTS:

A. ASHEVILLE TREE COMMISSION ANNUAL REPORT

Mr. Bill Jones, Chairman of the Asheville Tree Commission, recognized the Tree Commission members. He said the mission of the Commission is to support the vitality of the City's trees through professional arboricultural practices and conscientious stewardship.

Key accomplishments include (1) Commission represented (by member) on the Technical Review Committee; (2) Pack Square Conservancy Board: "make gardening and horticulture come alive in the park;" (3) Subcommittee/Planning staff re: Unified Development Ordinance landscape alternatives (changes adopted May 22, 2007); (4) Developed two lists - (a) recommended species (for planting); and (b) invasive plants (to avoid); (5) Tree Commission: alternative board for landscaping alternatives; (6) Enforce Chapter 20 (Trees) regarding pruning and overall tree health; and (7) Citizen Response Committee - reviews tree removals; consists of three foresters/arborists.

The Citizen Response Committee's duties include (1) review select trees located in rights-of-way; (2) evaluate trees which may adversely affect persons or property; (3) recommend action(s) to the Tree Commission for approval; and (4) provide technical advice to citizens.

Their 2007-08 goals include (1) Alternate Compliance Committee (convene in August, 2007); (2) Technical Review Committee activities; (3) SACEE partnerships; and (4) Chapter 20 (Trees) enforcement.

He then explained how important proactive tree management is.

Mr. Jones responded to various questions/comments from Council, some being, but are not limited to: how do we go about staging for tree life cycles in our community; what kinds of things would the Tree Commission like to propose for our community; should there be stronger rules prohibiting invasive species; would it be in our best interest to have strict rules on the cutting of trees even on residential properties; and how can we preserve our overall tree canopy.

There was a brief discussion about tasking the Tree Commission with the responsibility of reviewing air right requests, prior to Council consideration, from a standpoint of how they affect landscaping below the balconies. Mayor Bellamy asked that whatever is decided, that Council not make a motion until we have a little more information on what our intended purpose is and that we be specific in what we want.

Mayor Bellamy would like the Tree Commission to look at (1) getting involved in the update of the Greenway Master Plan; and (2) partnering with Warren Wilson College.

On behalf of City Council, Mayor Bellamy thanked Mr. Jones and the entire Tree Commission for their hard work on this Commission.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 919 HAYWOOD ROAD, ALONG WITH A DEVELOPMENT MASTER PLAN, FROM INSTITUTIONAL DISTRICT, RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN PLACE DISTRICT/CONDITIONAL ZONING FOR A MIXED USE DEVELOPMENT AND MODIFICATIONS OF THE UNIFIED DEVELOPMENT ORDINANCE STANDARDS FOR LANDSCAPING, BUILDING SETBACKS AND SIDEWALK WIDTHS

ORDINANCE NO. 3511- ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 919 HAYWOOD ROAD, ALONG WITH A DEVELOPMENT MASTER PLAN, FROM INSTITUTIONAL DISTRICT, RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN PLACE DISTRICT/CONDITIONAL ZONING FOR A MIXED USE DEVELOPMENT AND MODIFICATIONS OF THE UNIFIED DEVELOPMENT ORDINANCE STANDARDS FOR LANDSCAPING, BUILDING SETBACKS AND SIDEWALK WIDTHS

Mayor Bellamy opened the public hearing at 5:50 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to conditionally zone property located at 919 Haywood Road, along with a development master plan, from Institutional District, RM-8 Residential Multi-Family Medium Density District and RS-8 Residential Single-Family High Density District to Urban Place District/Conditional Zoning for a mixed use development and modifications of the Unified Development Ordinance (UDO) for landscaping, building setbacks and sidewalk widths. This public hearing was advertised on August 3 and 10, 2007.

The proposed project is located at 919 Haywood Road on 4 parcels totaling 2.93 acres. The site is the former home for St Joan of Arc Roman Catholic Church. The church relocated their facility further out in west Asheville. The site has frontage on three streets and covers the entire end of the block facing Haywood Road. Mitchell Avenue and Blue Ridge Avenues are secondary frontages for the development and have a residential character. The current proposal is a conditional zoning to Urban Place District

following the master plan that has been revised from an original plan approved for the site in 2006. That plan proved to be too costly to construct as proposed so the plan was modified. During the original planning process the developer held a charette to solicit resident and community input on the design and proposal. Many people were appreciative of that process because it provided a format for input at the design stage. The current plan is a scaled down version but similar to the original proposal in focus and access.

The plan proposes 56 residential units (19 units per acre) and about 10,000 square feet of commercial space. Three mixed-use buildings will face and be accessed from Haywood Road. These are the largest structures in the proposal. A pair of driveways from Mitchell and Blue Ridge Avenues provides vehicular access to the site. The bulk of the structures located behind Haywood Road are residential in scale and design. No structure is taller than three stories. The residential structures are made up of duplexes and triplexes that are located over garage parking. Four single family units will be placed at the rear of the site with two units on Mitchell Avenue and two along Blue Ridge Avenue. These single family style units will help make the project compatible with the character of the neighborhood. As a feature of the plan, the residential structures become smaller and reduced in scale the greater the distance from Haywood Road. All parking for the project will be provided within the site in a central parking area and scattered behind and under structures in parking garages. Business patrons will be able to park in spaces behind the mixed-use buildings.

Existing landscaping on the project site includes many mature trees. The development team made an effort to place structures in a way that will allow some of the trees to be maintained. When the church acquired the neighboring properties the existing houses were removed. At least one of the homes was burned. Trees surrounding this home were damaged by the blaze. In another section of the site native Canadian hemlock trees are heavily damaged by the parasitic hemlock woolly adelgid and all of them will have to be removed. The design team has hired a certified arborist to analyze the trees and advise on which ones have the best chance to remain healthy or strengthen. In a few places healthy trees will be removed to provide space for structures and infrastructure. A site survey will be prepared and reviewed in the interest of preserving as many trees as possible.

The project is seeking three modifications from City Council for requirements found in the landscape ordinance and in the Urban Place District:

- Property line buffer to provide a reduced buffer without a required fence along the north side of the development. The proposed landscape buffer would be fifteen feet instead of a 20 foot buffer and a 30 foot buffer adjacent to the RM-8 and RS-8 properties respectively. The project is seeking a waiver of the standard fence requirement with a 50% buffer width reduction referenced in the landscape ordinance. This modification comes at the request of the neighborhood who didn't want to 'wall' the project from the neighborhood and who felt that the fence would do that. The buffer will be well planted and the existing evergreen trees will remain. A similar request was approved during the original project review in 2006.
- Sidewalk width along Mitchell Avenue and Blue Ridge Avenues from Urban Place standards of 10' and instead provide sidewalks narrower (4-5 feet) in order to preserve existing trees and rock work etc. The intent of the wider sidewalk requirement is to support mixed-use projects that are the focus of the Urban Place district. Both Mitchell Avenue and Blue Ridge Avenue have a residential character. The sidewalk modifications will be in keeping with the sidewalk widths in residential areas. The sidewalks will follow the City standard of a 5' sidewalk with a 5' grass strip in some places and in others will be a 5' sidewalk placed behind the curb. The modification will allow the designers to avoid damage to existing trees and an existing rock wall along Blue Ridge Avenue. City Council approved flexibility with regard to the sidewalks when the project was approved in 2006.
- Setbacks for Buildings 4, 7 and 8 to preserve existing vegetation (setback proposed up to 45 feet) as shown on the master plan. The Urban Place District allows a maximum setback of fifteen feet from the right-of-way line. The description of the setbacks provides some flexibility and recommends greater setback if needed to preserve existing trees. The setback request is for residential buildings fronting on the Mitchell and Blue Ridge Avenue side streets. The setbacks will allow some of the trees near the street to be protected. The setback for building 7 would be 35 feet and buildings 4 and 8 would be 45 feet. The original plan was approved with a similar setback and layout.

The project was also approved for variances from design and operational standards by the Planning and Zoning Commission at their meeting on August 1, 2007. The Planning and Zoning Commission is able to grant variances to design and operational standards:

- Orientation of buildings towards the primary access corridor for buildings 5, 6,9,10, 11, 12, 13, 15, 17, 18, 20 which are arranged within the project area around green spaces and the access driveway and will not face the surrounding streets with an official front. Orientation for these structures is shown on the master plan and was recommended for approval by the Planning and Zoning Commission.
- Window requirements will need variances for ground floor windows for the residential structures. The requirement in the Urban Place District, for window openings at the ground floor level is 40 %. This standard is most suitable for mixed-use buildings in a development. Residential buildings are not as well suited for this openings requirement although the code does not provide any distinction between the types of uses. For the ground level windows, the Planning and Zoning

Commission voted to approve the window openings as proposed by the developer recognizing the residential use of the structure. The buildings will have ground level windows at 16% for type 'B' structures, 27% for type 'C' structures and 22 % for type 'D' structures.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
The project will meet City and State code requirements. The Technical Review Committee will have a final detailed review of the project should the master plan be approved.
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 larger buildings will be placed with frontage along Haywood Road. Other structures are placed within the site in a way that will preserve existing vegetation. A setback variance is being requested for three structures in order to preserve existing trees.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
Reinvestment at this site is expected to be a positive catalyst for this portion of Haywood Road. The development is not expected to injure the value of adjoining property.
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 largest buildings in the development will front along Haywood Road, a commercial corridor. The building scale and massing for the rest of the development is reduced to provide a residential character as it interfaces with the residential use along Mitchell and Blue Ridge Avenues. The tallest structures are three stories. The project is in harmony with the scale, bulk, coverage and density of the area.
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 comprehensive plan encourages the redevelopment of infill sites. Mixed-use higher density projects located on commercial corridors are appropriate because of their efficient use of land, support for transit and pedestrian connectivity and because they provide a variety of housing options in the community. This development pattern is supported by plans and policies adopted by the City.
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 site has sufficient infrastructure to support this proposal. Utilities are present in the vicinity. A fire and police station is located along Haywood Road. The Asheville Transit Route One passes in front of the site along Haywood Road.
7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The project is not expected to create traffic congestion or create a traffic hazard. The project was reviewed by the City Traffic Engineer and with minor modification will meet City traffic standards.

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

This conditional zoning request was recommended for approval by a 6-0 vote by the Planning and Zoning Commission. No one, besides the development team, spoke at the hearing.

Pros

- Property at a key location is being redeveloped
- Neighbors and the community were involved in the planning process
- The project is expected to be a positive catalyst for this area of Haywood Road

Cons

- Some additional traffic may be added to neighborhood streets.
- The proposed development will be more intense than the prior church use.

The Planning and Zoning Commission recommended approval of the conditional zoning request with a vote of 6-0. They also approved the design and operational variances requested for the development. Staff concurs with these recommendations.

Mr. Tony Hauser, Ambient Design Group, reviewed with Council the Village at Haywood. He reviewed the site, the mixed uses on the site, the variety of housing, open spaces, pedestrian connectivity and their community input sessions.

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

In response to Councilman Freeborn, Mr. Glines reviewed the buffering in the rear.

Mr. Glines responded to Mayor Bellamy when she asked how this plan differs from the original plan approved by Council; will the interior streets become City streets; request to have trash receptacles be placed on Haywood Road and in the interior of the development; and what are the plans for stormwater control during construction.

In response to Councilman Freeborn, Mr. Hauser said the price points for the residential units are \$199,000 to \$299,000.

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

Councilman Mumpower moved for the adoption of Ordinance No. 3511, to conditionally zone property located at 919 Haywood Road from Institutional District, RM-8 Residential Multi-Family Medium Density District and RS-8 Residential Single-Family High Density District to Urban Place District/Conditional Zoning for a mixed use development and the site master plan and modifications as presented, subject to the following standard conditions as well: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) 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; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 23 - PAGE

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CREATE A MIXED USE DEVELOPMENT DISTRICT

Mayor Bellamy opened the public hearing at 6:06 p.m.

Interim Planning & Development Director Shannon Tuch said that this public hearing and the public hearings to (1) consider an amendment to the Unified Development Ordinance to provide for development standards for parking garages and (2) consider rezoning properties located on or near Merrimon Avenue are related and that she would present all three issues together, but noted that they all three would need to be voted on separately.

Ms. Tuch said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to create a mixed use development district. This public hearing was advertised on August 3 and 10, 2007.

From Staff Report: Staff has been working on a way to simultaneously consolidate some of our "urban" zoning districts while implementing corridor plans like the Merrimon Avenue and River Redevelopment/Wilma Dykeman plans.

The ordinance has been modified to reflect the direction given to staff at the Planning and Zoning Commission's June 6, 2007, meeting. The Commission also recommended scheduling this item with a new parking garage standards amendment considered by the Commission in July.

Pros:

- Provides a way to consolidate several urban districts while allowing flexibility for specific circumstances.
- Promotes City goals of code streamlining, mixed use development, green building, and tax base enhancement.
- Helps implement Merrimon Avenue zoning study.

Con:

- Application to various corridors will result in changes to existing land use patterns (possibly a pro).

On June 6, 2007, the Planning and Zoning Commission voted unanimously (6-0) to recommend approval. Staff

recommends City Council approve an ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville to create a mixed use development district.

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH DEVELOPMENT STANDARDS FOR PARKING GARAGES

This public hearing was held in conjunction with Public Hearing B and D.

Ms. Tuch said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to establish development standards for parking garages. This public hearing was advertised on August 3 and 10, 2007.

From Staff Report: This code amendment provides for development standards for parking garages.

At the June 6, 2007, Planning and Zoning Commission meeting, direction was given to staff to prepare a code amendment for parking garage development standards. This ordinance results from that direction and includes the following special provisions:

- Screening and landscaping standards
- Façade requirements
- Ground-floor use requirements
- Lighting standards

The amendment has been routed to CAN, CREIA, and CIBO, among others, for review and comment.

Pros:

- Ensures higher compatibility with adjacent residential and commercial properties; reduces potential for land-use conflict.
- Is consistent with parking garage standards in other districts (CBD).

Cons:

- Requires more detailed review.
- Adds costs to development (although additional costs are not felt to be significant).

- On July 12, 2007, the Planning and Zoning Commission recommended unanimous approval of the proposed code amendment by a vote of 4-0. Staff recommends City Council approve an ordinance amending the UDO to establish development standards for parking garages.

D. PUBLIC HEARING TO CONSIDER THE REZONING PROPERTIES LOCATED ON OR NEAR MERRIMON AVENUE FROM COMMUNITY BUSINESS I DISTRICT, COMMUNITY BUSINESS II DISTRICT, COMMUNITY BUSINESS I DISTRICT/CONDITIONAL ZONING, COMMUNITY BUSINESS II DISTRICT/CONDITIONAL ZONING, NEIGHBORHOOD CORRIDOR DISTRICT/CONDITIONAL ZONING AND HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING TO MIXED USE DISTRICT

This public hearing was held in conjunction with Public Hearing B and C.

Ms. Tuch said that this is the consideration of an ordinance rezone properties located on or near Merrimon Avenue from Community Business I District, Community Business II District, Community Business I District/Conditional Zoning, Community Business II District/Conditional Zoning, Neighborhood Corridor District/Conditional Zoning and Highway Business District/Conditional Zoning to Mixed Use District. This public hearing was advertised on August 3 and 10, 2007.

From Staff Report: A 2006 survey of citizens and property owners indicated a general desire for Merrimon to become a mixed use corridor, with pedestrian-friendly and transit-supportive development and with businesses that are used by the surrounding neighborhoods as well as some specialty/designation retail of relatively small scale. Additionally, there was a preference for more "traditionally-designed" buildings oriented to the Merrimon Avenue. Two groups that have worked with staff on this zoning study – the Merrimon Avenue Study Group and the Merrimon Avenue Business Group – prepared a plan that illustrated their vision for the corridor that is consistent with the above goals from the survey.

- At the Planning and Zoning Commission's direction, staff has worked with these groups to prepare a zoning district that allows customization of certain requirements for particular areas. This proposed zoning district, the Mixed Use District (MXD), is proposed to replace the commercial zoning designations of CB-I, CB-II, and HB along the Merrimon corridor.

Application of the MXD zoning district will create numerous nonconformities for existing developments. However, most of

the existing developments are currently nonconforming under their current CB-I and CB-II zoning since these districts require parking to be to the side or in front of the buildings (just as the MXD district would require). Nonconforming structures are grandfathered and their continued use is allowed.

The advantages of the MXD zoning over the existing zoning include:

- MXD will allow greater density and development intensity than CB-I.
- MXD will allow greater density and development intensity than CB-II using the Community Incentive Table.
- CB-I encourages the most intensive traffic generators – convenience store and gas stations.
- CB-II and HB encourage “box” type development that are also high traffic generators and attract regional customers to Merrimon Avenue.
- MXD promotes a more efficient land use pattern that supports multi-modal transportation instead of just automobile transportation.

The Planning & Zoning Commission considered this request at their June 6, 2007, public hearing. After a period of public comment and deliberation, the Commission voted to unanimously approve the rezoning (6-0) with one change and a number of exclusions. Specifically, the Commission chose to:

- Change the zoning for properties located at 11 & 17 Larchmont from CB-II to RS-8.
- Exclude the HB zoned property commonly referred to as the Deal Buick property.
- Exclude the cluster of HB zoned properties further north which includes: Stein Mart, Sav-Mor, Eckerd's, the Fresh Market shopping center, Ingles, and other smaller miscellaneous parcels.
- Exclude the CB-II property located at 825 & 841 Merrimon Ave., commonly referred to as the Walgreen's property along with the adjacent strip center.

Staff can fully support the request to change the zoning of the properties located on Larchmont which originated from the owners who described the properties as being residential in character and who expressed a desire that they remain that way. Similarly, staff also supports the exclusion of the HB zoned properties recognizing that the properties are well suited for future site specific rezonings such as the Urban Village plans that are currently being developed for the Deal Buick site.

Lastly, staff can also support the exclusion of the identified CB-II zoned Walgreen's property since its recent redevelopment has rendered it an unlikely candidate for new future development. The adjacent strip center is more likely to be redeveloped; however, the parking layout is tied to the existing parking condition at Walgreen's and it is difficult to consider redevelopment in a substantially different form than what currently exists. It is important to note however that the Walgreen's and adjacent strip center property are currently non-conforming in layout and that both the CB-II and MXD zoning would require new buildings to be located close to the street with parking to the side or rear. With respect to parking, MXD zoning with the Merrimon specific standards is more flexible than CB-II in that it allows some parking to be located in front of the building while the current CB-II standards do not; however, MXD would require other standards, such as a two story minimum and other fenestration requirements that CB-II would not require. In summary, the cost-benefit of including or excluding these properties is relatively equal.

Pros:

- Survey goals are achieved.
- Greater development intensity provides an incentive for property owners.
- Since most properties are nonconforming currently, there is not a significant change in conforming/nonconforming status.
- The zoning requirements are “personalized” for Merrimon Avenue.

Cons:

- Some new non-conformities would be created.
- Development/redevelopment costs would likely be increased due to higher development standards.

Staff concurs with the Planning & Zoning Commission and supports the rezoning of CB-I, CB-II, and NCD (CZ) properties along Merrimon Avenue to MXD.

Council may choose to consider whether the HB zoned properties and identified CB-II zoned properties should be included in the rezoning request.

Using a PowerPoint presentation, Ms. Tuch began presenting all three public hearings together. She reviewed the survey results regarding the Merrimon Avenue Corridor. She explained there are three primary existing districts on Merrimon Avenue - Community Business I District, Community Business II District and Highway Business District. She explained the proposed

standards of the MXD. She said this has been a cooperative effort of the Merrimon Avenue Corridor Study Group and the Merrimon Avenue Business Group and briefly reviewed their group recommendations.

She said that staff's conclusion is that MXD was appropriate for Merrimon Avenue, addressing the concerns that the MSD will create numerous nonconformities, development incentives will be lost, and traffic congestion.

Staff requested Council consider tailoring the MXD to Merrimon Avenue and zone most areas to MXD. Largely as a result of the input provided to staff from the study groups, we created a separate set of standards that would apply only to the Merrimon Avenue corridor.

Staff's recommendation is to zone Community Business I and Community Business II and Neighborhood Corridor District to MXD (excluding the Walgreen's site and the property next to the Walgreen's site to the south - Blockbuster strip center); and exclude the Highway Business District properties (Deal Buick site, Stein-Mart/Fresh Market sites; and Ingles site) but promote Urban Village redevelopment.

She explained the reasons behind the suggested exclusions (1) the reason for excluding the Walgreen's site is that it has been recently developed and it's unlikely that it will be redeveloped anytime soon; (2) the reason for excluding the Deal Buick site is that the developer is working on creating Urban Village plans and a significant amount of investment has been made on the developer's behalf to develop the Urban Village site - we feel pretty comfortable knowing that we can expect a redevelopment plan for that site in the future; (3) the Stein-Mart/Fresh Market sites are very appropriate for Urban Village - it is in an under-leased state currently and we think that would be a prime for redevelopment in the future; and (4) at the Ingles site, there is less potential for that to turn into an Urban Village in the future, but it is a business that heavily supports the north Asheville community and we do think it is a valuable part of the corridor.

Mr. Albert Sneed, attorney representing the owners of the Deal Buick site, requested their site remain zoned Highway Business District in that they are pursuing an Urban Village designation.

A property owner who adjoins Ingles was uncertain about the recommendation concerning his property.

Mr. Jim Groce, property owner of Walgreen's and Blockbuster retail strip center, requested his property remain zoned Community Business II District.

Mr. Mike Lewis, member of the Merrimon Avenue Corridor Study Group, explained that they have worked on this corridor for 22 months and hoped that Council would approve zoning the entire Merrimon Avenue corridor to MXD.

Ms. Hedy Fischer, member of the Merrimon Avenue Corridor Study Group, pointed out that the Larchmont properties were not mentioned but they should be rezoned as residential. She explained how the MXD is appropriate for the entire corridor without exclusions. She felt that if the Deal Buick development fails (or any of the properties suggested for exclusion) it would be better to have the zoning be MXD and not the Highway Business District. She felt that if the owners of the Deal Buick property are going to have to have their property rezoned from Highway Business District to Urban Village District that they can just as well ask that their property be rezoned from MXD to Urban Village District.

Mr. Joe Minicozzi, President of the Coalition of Asheville Neighborhoods, felt that MXD is the right use for the entire corridor without exclusions.

Mr. Robbie Sweetser, Merrimon Avenue resident, urged Council to rezone the entire Merrimon Avenue corridor MXD with no exclusions (except for the Larchmont property to be rezoned to residential).

Ms. Heather Rayburn, President of the Five Points Neighborhood Association, felt the entire Merrimon Avenue corridor should be rezoned to MXD, with no exclusions.

Mr. Randy Jamison, representative of Ingles Markets, requested the Ingles property remain zoned Highway Business District and explained that they need to keep that designation in order to remodel the store in the future.

Ms. Billie Buie, member of the Merrimon Avenue Corridor Study Group, felt there needs to be some mention of street trees in the planting strips between the sidewalks.

Rev. Christopher Chiaromonte supported exempting the Highway Business Districts.

Mr. Frank Dozier felt that the MXD is too restrictive.

Ms. Erica Allison, representing CS Merrimon Avenue Development, LLC, spoke in support of exempting the Highway Business Districts.

Ms. Susan Roderick, member of the Merrimon Avenue Corridor Study Group, pointed out that Merrimon Avenue is not a highway and the street should be consistent. She didn't think that keeping the Deal Buick site zoned Highway Business District is necessary.

A Liberty Street resident expressed concerns of what will be built on the Deal Buick site and that the spirit of the neighborhood should be respected.

At 7:02 p.m. Mayor Bellamy closed the public hearing.

Ms. Tuch responded to various questions/comments from Council, some being, but are not limited to: how can we make our product more user-friendly, i.e., a form based code; is Atlanta Bread Company a single or two-story building; were there any exclusions asked for by the two study groups; is there a value to keep Merrimon Avenue under the N.C. Dept. of Transportation control; and what was the process of the adoption of the UDO in 1997.

Discussion occurred of how the MXD would hinder Ingle's future remodeling.

Councilwoman Cape was supportive of the MXD without a lot of exemptions. She was not supportive of exempting the Deal Buick site since it would not slow their development of the site with a rezoning request from MXD to Urban Village District. She could, however, support the existing Highway Business District for Ingles' Markets.

Councilman Davis applauded the efforts of the neighborhood study groups. He was, however, concerned that rezoning this entire corridor may be too much at one time with the number of questions still being raised by property owners. We are looking at big pieces of this and letting the small ones get away.

Councilman Mumpower felt Merrimon Avenue is a highway. He felt we are intruding on the future ability of so many people to do something useful with their property in the name of some special interest indulgence. He will not support the rezoning, but would speak in favor of the exemptions.

Discussion surrounded the Deal Buick site requested exemption.

Councilwoman Cape requested further discussion with the NC DOT regarding obtaining excess right-of-way back for development.

Mayor Bellamy noted that no one has said that this planning process was mandatory and at the end, the recommendations put forward would automatically be accepted by the community or Council. Tonight, she has not heard any property owner who owns property in the impacted study area express support for it.

Ms. Tuch responded to Mayor Bellamy when she asked if the building that collapsed on Merrimon Avenue will be the pattern of buildings we will see on Merrimon Avenue and/or could we get another Staples building.

In response to Mayor Bellamy, Ms. Tuch said the primary goal of the study on Merrimon Avenue is to promote a smart pattern of development - to encourage multi-modal access, to encourage density where it hasn't been encouraged before, to provide incentives for that kind of development, and also to mix the uses so that you can have residential in a retail area close to employment centers in order to be able to reduce the reliance on cars or other transportation.

Mayor Bellamy said that if that is the goal, she didn't believe we achieved it. She believed that the 919 Haywood Road development achieves that goal more than what is presented tonight. She does think the MXD is a step in the right direction. Councilwoman Cape's idea of a form based code would be perfect for what we want here to exhibit exactly what we want in this corridor. The Ingles representative has a valid point. The reason we don't have the Charlotte Street Ingles is because we changed the rules after the fire occurred and they could not rebuild in the way the neighborhood residents wanted to see a new Ingles in their community. She thinks we missed on what we are trying to accomplish. She suggested sending this back to the Planning & Zoning Commission or giving Council some more time to really visually look at what we are trying to accomplish. She doesn't think that people want more of the Edney building or another Staples. We might end up creating a wind tunnel on Merrimon Avenue and changing the whole footprint and that wouldn't be what we want. She believed that if we have the Atlanta Bread Company model out Merrimon on different levels, that model would be more of a feel people could live with. She apologized to the study groups and acknowledged their 22 months of work, however, she thinks that the best opportunity that we have is to really take our time, because she doesn't think that what we have on the table tonight will really get the desired affect that the community wants to live with for 50 to 100 years on Merrimon Avenue. She thinks we are creating a monster. She thinks it will come back to bite us not

only in the future but in the next couple of years because we cannot visually determine what we want. If we have the people who own the property, who are represented in this room, and not one of them has supported anything that has been presented as far as the rezoning, there is a problem. Although she appreciates public input, the property owners (who the study group is asking to comply) are the ones who are impacted, and if they don't like it, it's very hard for them to comply. She thinks what we are getting is not exactly our intended outcome. She thinks we need to look at the process and maybe see some drawings on the highest and best use of the properties and look at the buffering requirements to see how they fit in. But what we have on the table tonight, she cannot support. She can support the creation of a MXD and the development standards for parking garages, but not the rezoning of properties on Merrimon Avenue to MXD.

Councilwoman Cape said that what she likes about the MXD is that it's giving that flexibility to property owners that will allow more of the Atlanta Bread Company models and not end up with the Edney building or Staples. She feels that the property owners aren't upset or they would be here. People often don't come out unless they are upset. We are trying to give a better product than we have now.

Councilwoman Cape moved to amend the UDO to create a MXD. This motion was seconded by Vice-Mayor Jones.

Councilman Freeborn was concerned that we are not allowing enough square footage for grocery stores and asked Councilwoman Cape if she would accept a friendly amendment to increase the 24,000 gross sq. ft. area to 48,000 gross sq. ft. Councilwoman Cape accepted the friendly amendment and was open for staff to give a recommendation on this.

Councilman Newman preferred a little more time to think about the comments and to talk to others about their ideas. Since Merrimon Avenue is a big corridor and there are a lot of properties involved, he again requested a little more time to review this matter.

Councilman Davis agreed with Councilman Newman.

Councilwoman Cape withdrew her motion if a date can be set to continue this matter.

Councilman Newman moved to postpone the three issues until September 18, 2007 (with Mayor Bellamy's concurrence). This motion was seconded by Councilwoman Cape, with Councilman Mumpower voting "no."

Mayor Bellamy noted that on the August 28, 2007, agenda, there will be updates on Greenlife, Staples and UDO amendments. At that meeting, she requested that staff provide Council with general information on a form based code along with some examples of form based codes.

There was a brief discussion about considering a form based code for Asheville.

At 8:03 p.m., Mayor Bellamy announced a short break.

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 07-152 - RESOLUTION TO RESCIND RESOLUTION NO. 07-144 AND AUTHORIZE STAFF TO SOLICIT PROPOSALS FROM QUALIFIED PROFESSIONALS TO WORK WITH THE N.C. DEPT. OF TRANSPORTATION TO EVALUATE THE ASHEVILLE DESIGN CENTER'S PROPOSED I-26 ALIGNMENT

Director of Transportation and Engineering Cathy Ball said that this is the consideration of a resolution to rescind Resolution No. 07-144 and authorize staff to solicit proposals from qualified professionals to work with the N.C. Dept. of Transportation (NCDOT) to evaluate the Asheville Design Center's proposed I-26 alignment. City staff is also requested Council appoint a Technical Review Committee consisting of six professionals in the area of Engineering, Architecture and/or Planning. This group will consist of two representatives from the County, two from the City and two from the Asheville Design Center. Staff recommends Council appoint herself and the City's Traffic Engineer Ken Putnam.

On July 24, 2007, City Council adopted Resolution 07-144 authorizing the City Manager to contract with the Asheville Design Center in the amount of \$70,000 to perform an engineering analysis of the alternative design for I-26 proposed by the Asheville Design Center. Since that time, Buncombe County has agreed to pay \$35,000 to assist in the cost of the study, provided the City contracts to have the work completed.

The consultant would evaluate the methodology the NCDOT used in their review of the Asheville Design Center's alignment. The consultant would meet with the NCDOT and review the criteria used to make its recommendation develop options to overcome the hurdles that NCDOT outlined their report. The consultant would then provide City Council with a report detailing their findings.

Pros:

- Assist the City in deciding how to move forward with the Design Center's proposed alignment.
- Buncombe County will be paying \$35,000 toward the study.
- A technical review committee will be established to oversee the engineering process.

Con:

- The process will take longer than contracting with the Asheville Design Center because staff will need contract authorization from Council prior to signing an agreement with the successful firm.

Staff recommends that City Council rescind Resolution 07-144 and authorize staff to solicit proposals from qualified professional to work with the NCDOT to evaluate the Asheville Design Center's proposed alignment. Staff also requests that Council appoint two representatives (City Director of Traffic and Engineering Cathy Ball and City Traffic Engineer Ken Putnam) to the Technical Review Committee.

In response to Councilwoman Cape, Mr. Joe Minicozzi, President of the Coalition of Asheville Neighborhoods, said that they are supportive of this change.

Councilman Mumpower is apprehensive about anything that alters the potential for further delay. Even though he liked the alternate from the Asheville Design Center, his concern is that they got involved late in the progress, thus further delay.

Councilman Newman was glad to be on a city council that supports the tremendous planning effort that the Asheville Design Center has provided leadership on in the community. He was pleased that Buncombe County and that our state delegation has all come together recognizing the huge potential benefits of this design to the community in terms of growth management and economic development.

In response to Councilman Davis, Ms. Ball said that she anticipated at least six weeks before we actually are able to get the contracts underway because we will go out with the Request for Proposals, receive them, recommend awarding them and then come back to City Council to actually award the contract. Then from the time the contract is signed, she anticipated the study taking 90 days.

Mayor Bellamy publicly thanked the Buncombe County Commissioners for their willingness to pay half the fee (total of \$70,000) and for their commitment to see this process through.

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

Councilman Freeborn moved to adopt Resolution No. 07-152 to (1) rescind Resolution No. 07-144 and authorize staff to solicit proposals from qualified professionals to work with the NCDOT to evaluate the Asheville Design Center's proposed I-26 alignment; and (2) appoint a Technical Review Committee consisting of six professionals in the area of Engineering, Architecture and/or Planning, with said group consisting of two representatives from the County, two from the City and two from the Asheville Design Center. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE

B. SECOND READING OF ORDINANCE NO. 3506 - AN ORDINANCE APPROVING A MASTER SIGN PACKAGE FOR PHASE II OF BILTMORE PARK TOWN SQUARE

Mayor Bellamy said that this public hearing was held on July 24, 2007, and needed to come back to City Council for a second vote due to the vote.

Councilman Davis felt the Master Sign package was good and regretted that we are killing the creativity of the stand alone sign.

Councilman Mumpower felt we are creating liberties that we are not giving smaller less wealthy businesses and still exerting control.

Councilwoman Cape was supportive of the Master Sign package to have signs within the context of their own buildings. However, this is a sign on a highway in a community that doesn't really like billboards and this sign is as big as a billboard.

Councilwoman Cape moved for the adoption of the second and final reading of Ordinance No. 3506. This motion was seconded by Vice-Mayor Jones and carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 23 - PAGE

C. RESOLUTION NO. 07-153 - RESOLUTION TERMINATING THE UPSET BID PROCESS FOR THE GRANT OF AIR RIGHTS ADJACENT TO 82 PATTON AVENUE AND AUTHORIZING THE COMMENCEMENT OF A MODIFIED PROCESS

City Attorney Oast said that this is the consideration of a resolution terminating the upset bid process for the grant of air rights adjacent to 82 Patton Avenue and authorizing the commencement of a modified process.

On April 10, 2007, Council adopted Resolution No. 07-83, authorizing the sale of air rights over the right-of-way adjacent to 82 Patton Avenue, utilizing the upset bid process set out in N.C.G.S. 160A-269. The initial offer that Council received for this air space was submitted by the developers who are renovating the old First Union Building, and was intended to allow for the construction of balconies on the front of the building that would project over the right-of-way.

There has been a bidding war between the developers who want to be able to construct their balconies as planned and the people who are bidding against them, who are concerned about the potential for this practice to take out light from the street trees and street level vegetation.

This potential sale was not made conditional on balconies actually being constructed. Further review of the applicable law indicates that attaching such a condition to the grant of air rights is a more appropriate process to use. This will require that Council terminate the process currently underway, and authorize staff to start it over again upon receipt of a qualifying offer.

Pros:

- More closely follows intent of statute
- Allows City more control of development within airspace
- Allows for conditions

Cons:

- Requires (for this case) a restart of the process
- Some advertising expense will be lost

He believes we can address both the developers' and the other party's concerns by requiring that whatever permanent improvement is built on the side of the building comply with the plan that has been approved by, in this case, the Downtown Commission, and also that the plan be reviewed by the Tree Commission to ensure that the street level vegetation is not compromised. By terminating the current process, we could end the bidding war and have the ability to impose those conditions on the developers, assuming we receive a qualified offer.

Adoption of the resolution terminating the current process, rejecting all bids, and directing staff to facilitate a process where construction of permanent structure is a condition of the sale, is recommended.

Ms. Elaine Lite, representative of PARC (People Advocating Real Conservancy) said when air rights are sold the City is paid a token sum with developers gaining valuable rights they can re-sell for hundreds of thousands of dollars. Often the opportunity to plant street trees is lost and the results are sometimes unsightly. In an effort to bring this issue to the public, PARC began counter-bidding for the air rights at 82 Patton Avenue. She explained that their issue is not with the developer but with the City granting air rights and the small amount originally offered. She applauded the developers for renovating this building, but when they are spending over \$4 Million and we charge a little over \$3,000 for air rights, something is wrong. She feels that adoption of the resolution will eliminate the lawful process and result in a give-away by the City thereby removing the opportunity for additional revenue and cluttering our narrow City streets with overhanging structures.

Mr. Chuck Tessier, representing Urban Capital LLC (developer), said that they bought the building in November of 2005 and through 2006 they spent time doing design and taking the building through every single process of the City, including approval by the Downtown Commission. He said that the balconies, which were approved from the beginning of this process, would overhang the public right-of-way by 3.2 feet. If the balconies are not there, there would be one huge 8 story wall down to the sidewalk. He said the sidewalk on Patton Avenue is 10 feet wide and there are two street trees, neither of which would be impacted by these balconies. As to price on the balconies, we originally bid the price that was set by the City - it was 50% of the tax value of the land on which it is being encroached upon. The balconies encroach upon exactly 162 square feet of sidewalk and that sidewalk is being

shared by the public and the things above it, just as you would walk under any overhang on a sidewalk.

Mr. John Rogers, co-owner of the project, explained that his goal is to give the City the most attractive, interesting and dynamic building that he can for that important area, noting that there are many encroachments onto City property, i.e., awnings, tables at restaurants, canopies, etc.

Rev. Christopher Chiaromonte was concerned that once rules are made, they are changed at the drop of a hat.

Mr. Danny Lack pointed out that the bulk of the balconies at 21 Battery Park overhang an alley and only 1/4 of the balconies on that building actually overhang a sidewalk.

When Councilman Freeborn asked what would happen if Council didn't proceed with the staff recommendation, City Attorney Oast said that then the current process would continue. However, he felt that for the reasons noted, in the end it may be an invalid process and subject to challenge against the City and the person who won the bid (if the bid was won for not having anything built within the shaft of air). The statutes say that the air rights may be granted for the purpose of erecting a building or permanent structure. The statutes do not contemplate granting air right for the purpose of not having anything built within the shaft of air. Council also has the authority to not sell air rights at all. Regarding the cost of the air rights, Council previously instructed City staff to research the price and brought back to Council a recommendation on what staff felt the air rights should be sold for.

Throughout discussion, City Attorney Oast responded to various comments/questions from Council, some being, but are not limited to: do we have to treat the sale of air rights as real property; can we look at the square footage of all balconies combined; what if the developer were to enclose the balconies and used the enclosed square footage as office space; did Council approve the sale of the air rights at 21 Battery Park Avenue; and are the developers comfortable with what staff is proposing.

Councilman Newman questioned if we are selling the real property (air rights) for a fair value. Economic Development Director Sam Powers said that the current formula we are using is based on a factor of 20% of the per square foot land value of the property, for which the balcony projects, applied to the horizontal area over the air space. He is not a real estate expert, but based on previous appraisals, the sales comparison approach to value is a sound method to apply for estimating air rights.

Councilman Newman felt these projects should be looked at on a case by case basis, but the formula that we use should be standard.

Councilwoman Cape felt the air rights should be reviewed by the Tree Commission, prior to City Council consideration, with a standard formula for estimating air rights.

Councilman Mumpower moved to adopt Resolution No. 07-153. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Mayor Bellamy voting "no."

Mayor Bellamy did not support the motion in that she does not support the sale of air rights regardless of what process is used.

RESOLUTION BOOK NO. 30 - PAGE

Councilman Freeborn moved to direct City staff to work with community members and other parties to develop a process which takes into account development and community concerns on air rights and that the process go through the Technical Review Committee, the Downtown Commission and the Tree Commission. This motion was seconded by Councilwoman Cape.

Interim Planning & Development Director Shannon Tuch suggested the motion be re-worded that we examine this from a technical aspect regardless of the scale of the project, because some projects do not go through the Technical Review Committee but are reviewed by individual staff members.

Councilwoman Cape suggested the Tree Commission review be similar to the Greenway Commission review of road closings, whereby Council asks them to review it and give Council their recommendation.

Councilman Freeborn re-worded his motion for staff to work with the community to bring back a process by which the sale of air rights is reviewed by the Tree Commission, the Downtown Commission and receives review by the City's technical staff. This motion was seconded by Councilman Newman.

Councilman Newman suggested a language clarification of the motion since not every project will be in downtown so including the Downtown Commission in the motion is not necessary. Since in most cases where air rights are involved, the projects will be large and will already have to be reviewed by several other committees. He questioned if the Tree Commission the only

group that would be out of the loop or do we need to name the other commissions that will already be involved due to the size of the project.

Councilman Freeborn clarified that his intent of the motion is to look for the greatest community input on the sale of public property. All he really wants is for staff to review and bring back a proposed process. He mentioned a few commissions that might be included in that process, but they don't necessarily have to be.

Vice-Mayor Jones wondered if in addition to the standard formula used for appraising air rights if we could include some monies for legal time, economic development time, and Council time because that is real taxpayer dollars that we have incurred and will incur in the future.

Councilman Davis felt this is a good direction, but was concerned about slowing the process down again for people who are spending a lot of money to rehab an old building in downtown Asheville.

Councilwoman Cape agreed with Councilman Davis and if the developer submits a qualifying offer with a positive recommendation from the Tree Commission, she would not want to hold the project up.

Mayor Bellamy recommended that staff bring back to Council a proposed process in draft form first.

The motion made by Councilman Freeborn and seconded by Councilman Newman carried on a 6-1 vote, with Mayor Bellamy voting "no."

Upon inquiry of Councilman Davis, City Attorney Oast said that the next step for the developer will be to get a recommendation from the Tree Commission and incorporate that into whatever design they bring back to Council.

Councilman Davis, liaison to the Tree Commission, said that the Tree Commission will be meeting on Monday, August 20, 2007, and he will ask that this project be placed on their agenda.

VI. NEW BUSINESS:

- A. RESOLUTION AMENDING THE ANNEXATION SERVICES PLAN FOR THE YEAR 2007 ANNEXATION AREAS**
 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE BILTMORE LAKE AREA**
 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE SARDIS ROAD AREA**
 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE SCHENCK GATEWAY AREA**

Mayor Bellamy said that staff has had to make some minor changes to the Annexation Services Plan for the Year 2007. She suggested Council postpone that issue, along with the three ordinances extending the corporate limits of the City of Asheville, until August 21, 2007, in order to give the public an opportunity to review the changes, since the amendments were not posted on Friday.

In response to Councilman Mumpower, Urban Planner Julia Cogburn said that according to the N.C. Gen. Statutes the only amendments to the Plan for Services that require a re-opening of a public hearing are those that change the statutory requirements in terms of whether or not an area qualifies and these changes are not of that nature.

When Vice-Mayor Jones questioned if the neighborhoods are aware that the actions may be postponed, Ms. Cogburn replied that she wasn't aware that they were contacted. However, since some were not planning, if at all, to attend until later in the evening, she could start contacting them immediately, if Council chooses to postpone action.

After Mayor Bellamy asked if anyone would like to comment on the issue of the continuance, Councilman Mumpower moved to postpone action on (1) the resolution amending the Annexation Services Plan for the Year 2007 annexation areas; (2) ordinance extending the corporate limits of the City of Asheville to include the Biltmore Lake area; (3) ordinance extending the corporate limits of the City of Asheville to include the Sardis Road area; and (4) ordinance extending the corporate limits of the City of Asheville to include the Schenck Gateway area until August 21, 2007. This motion was seconded by Councilman Davis and carried unanimously.

B. RESOLUTION NO. 07-154 - RESOLUTION ESTABLISHING A DATE FOR THE SPECIAL ELECTION ON THE QUESTION OF AMENDING THE CITY'S CHARTER TO PROVIDE FOR PARTISAN ELECTIONS FOR MAYOR AND CITY COUNCIL, AND SUBMITTING PROPOSED WORDING FOR BALLOT

City Attorney Oast said that this is the consideration of a resolution establishing a date for the special election on the question of amending the City's Charter to provide for partisan elections for Mayor and City Council, and submitting proposed wording for ballot.

On June 12, 2007, Council adopted Ordinance No. 3485, amending the City's charter to provide for the election for Mayor and the Council to be held on a partisan basis; since 1994, Council elections have been non-partisan. Notice of this action was published on June 16, and on July 16 (within the 30 days allowed by law), a petition was received by the City Clerk. On July 31, we received word that the petition had been determined by the Buncombe County Board of Elections to be valid.

Pursuant to N.C.G.S. 160A-103, if a valid petition is received, Council must submit the ordinance that was adopted to a vote of the people, and the special election for that vote must be held between 60 and 120 days after the petition was received. Sixty days from July 16 is September 14, and 120 days from July 16 is November 13.

The receipt of the valid petition has caused the manner of election of Council to revert to the non-partisan system that was previously in place, which means that the primary will occur on October 9, and the general election will occur on November 6. According to the Board of Elections, both of these dates are available to Council to schedule a special election on the referendum; the cost to the City for doing this (basically, the cost of printing of ballots and legal advertisements) is approximately \$18,000; scheduling a special election that does not coincide with an already scheduled election is legally possible, but the estimated cost of doing so is \$40,000 to \$50,000. Several Council members have individually expressed a preference for the special election on the referendum to coincide with the October primary, and that is the date that is reflected in the resolution.

On Friday, August 10, the State Board of Elections met and set a new filing period for the non-partisan election. It begins at Noon on Monday, August 13 and ends at Noon on August 20. All candidates for Asheville City Council must file during this new filing period, regardless of whether they had previously filed. Other important dates in this process (registration, absentee ballots, etc.) were established as well and that information is available from the Buncombe County Board of Elections.

Although the law does not specify who prepares the form of the question to be placed on the ballot at the special election, it appears that this task also falls to Council. The entire ordinance need not be included, but the law provides that the effect of the amendment must be described. With this in mind, he has consulted with the School of Government, and developed the form that appears on the exhibit attached to the resolution, as follows:

"Shall the ordinance (City of Asheville Ordinance No. 3458 adopted June 12, 2007) amending the City Charter of the City of Asheville to change the manner of election of the Mayor and City Council from non-partisan to partisan, be approved? ___ Yes ___ No"

If Council approves of the date for the special election, and of the wording for the question to be placed on the ballot, adoption of the resolution is recommended.

Mr. Charlie Hume, speaking on behalf of Let Asheville Vote, requested the following two things: (1) that the special election be held on the general election date of November 6 (a) based on the voter turnout numbers in 2005; (b) it will add greater legitimacy and credibility to the whole process and to the final results of the referendum; and (c) it will give them more time to educate the voters; and (2) the wording on the referendum be clear and objective. He asked Council adopt the following proposed wording for the ballot: "Shall the ordinance (City of Asheville Ordinance No. 3458 adopted by City Council June 12, 2007) amending the Asheville City Charter and changing the manner of election of the Mayor and City Council from non-partisan to partisan, be approved? ___ Yes ___ No"

Mr. Mike Fryar supporting holding the special election on the general election date of November 6, 2007.

A man spoke to Council about ample opportunities for people to vote and he didn't think that holding the special election in the general election date of November 6, 2007, excludes anyone.

Ms. Heather Rayburn supporting holding the special election as soon as possible so we can deal with other pending issues of the community.

Mr. Ben Lack supported the general election date in that he felt you would receive a better cross section of voters and the wording change outlined by Mr. Hume.

Mr. Jack Saye, representing the League of Women Voters, said they do not have a position statement on this issue but would recommend to Council that the special election on this referendum be held with the general election.

Mr. Bill Lack supported the election being held on the general election date.

Ms. Christy Fryar supported the election being held on the general election date.

Councilman Mumpower moved to adopt Resolution No. 07-154 establishing a date for the special election on the question of amending the City's Charter to provide for partisan elections for Mayor and City Council for November 6, 2007. This motion was seconded by Councilman Davis.

Councilwoman Cape personally supported the special election being held in the primary because she does think the abilities to vote (register the same day of the primary and show up and vote) really aids more people than at the general election and she also believes that it is not the only issue facing the City. However, she will support the special election being held at the general election. She hoped that the people who said they want to educate the people really do educate the community about this process. An informed democracy is the only democracy worth having.

Vice-Mayor Jones spoke about some of the exciting things that have happened as a result of the Let Asheville Vote. A lot of people have gotten involved in the process and that is an important thing in our community. And, there has been some horrible things addressed at the Council members who voted in favor of the primary election. To be treated like she and others have been treated is not good and she is over being threatened and second guessed on what she felt was right. There are civic goods that exist on both sides. She cited civic goods about holding the special election at the primary. She felt it would be a tremendous benefit for people in the primary who are running to have good turnout. And it is a perfectly legitimate outcome. Whatever tools we can find to get voter turnout up is good. With all the good things that Let Asheville Vote did for a lot of people in the community, this would have been a great opportunity to mobilize a group of 5,022 people to come to the polls at the primary and help the unaffiliated candidates because up to now an unaffiliated candidate has not made it through the primary election. Whether we like it or not, there are civic goods on both sides. The thing that she hated about the process was that a lot of folks felt there is distrust in our electoral system and if she contributed to that genuine mistrust, she feels badly about that. To have distrust in our electoral system is not good for our community and even though personally she feels the right thing to do is to have the special election on the primary date, the distrust issue would be the only reason she might support holding the special election at the general election.

Mayor Bellamy announced a very brief break.

The motion made by Councilman Mumpower and seconded by Councilman Davis to hold the special election on the general election date of November 6, 2007, carried on a 6-1 vote, with Vice-Mayor Jones voting "no."

Councilman Newman moved to approve the following wording on the ballot: "Shall the ordinance (City of Asheville Ordinance No. 3458 adopted by City Council June 12, 2007) amending the Asheville City Charter and changing the manner of election of the Mayor and City Council from non-partisan to partisan, be approved? ___ Yes ___ No" This motion was seconded by Councilman Freeborn and carried unanimously.

RESOLUTION BOOK NO. 30 - PAGE

VII. OTHER BUSINESS:

A. WATER AGREEMENT NEGOTIATIONS

Mayor Bellamy said that Council needed to formally let the community know what has been taking place with the Water Agreement negotiations and Councilman Mumpower also requested that this matter be placed on Council's agenda. Councilman Mumpower has asked to make a PowerPoint presentation and at her direction, staff has prepared a presentation as well.

Councilman Mumpower reviewed the following PowerPoint: "A follow-up proposal to the Asheville City Council to advance our efforts to find fair solutions to our current water disagreement with the Buncombe County Commission and our Local Legislative Delegation.

A brief review of our past: (1) the process of Asheville assuming its water assets began approximately 3 years ago under former Mayor Worley and followed established protocol; (2) that action was immediately countered by a County misinformation campaign and discussion between County representatives and our local legislative delegation that led to their cooperative development of Sullivan Acts II and III; and (3) The promise of legislative action at the beginning of the negotiation process removed incentive for the County to work points of compromise - nonpublic negotiations helped conceal the authentic agendas of the negotiation process - stopping Asheville from assuming real control of her water assets.

Why have negotiations failed? (1) hidden agendas; (2) absence of public scrutiny and interest; (3) failure to uphold our word by negotiating with all three bodies in open forum; (4) focus on decoy issues such as civic centers; (5) a wish to treat Asheville differently than other cities who own their water system; and (6) power politics over responsible leadership.

What can we do going forward? (1) we should reopen negotiations in open public forum and include all three governmental bodies; (2) we should concentrate on core water issues and resist the distractions of "decoy" issues; (3) we should borrow from existing models of success by other community owned water systems; and (4) we should focus on points of compromise centered on incremental implementation that offers the hand of fairness to county residents affected by the change.

We should open negotiations with all three bodies. (1) bad stuff grows in the dark and public complacency is what turns out the lights; (2) all three bodies are involved and in control of the outcome in some form or fashion - all 3 at the table; and (3) open negotiations create more incentive for a healthy, honorable and honest process.

We should concentrate on core issues: (1) complexity prohibits progress; (2) the issue is water - and water is where we should be devoting our attentions; and (3) examples of core issues are differential water rates, annexation, service access, system maintenance, etc.

We should stop trying to reinvent the wheel: (1) 99+% of the cities in North Carolina who own their water system use the same model to manage those resources; (2) we should "box the compass" and look north (Weaverville), south (Hendersonville), east (Morganton) and west (Canton) for models for the Asheville system; and (3) it is this simple - Asheville, over time, should be treated just like other cities.

Incremental implementation is (1) treat Asheville like other cities, but use a long-term implementation plan - 15 years or more; (2) keep an eye on fairness to our neighbors and avoid heavy handed implementation; and (3) give fair consideration to City taxpayers who pay double the taxes of other County residents.

Sample "core" issues for negotiations would be: rate structure (1) all four of our "compass" neighbors (Hendersonville, Weaverville, Morganton and Canton) own their water system and charge differential rates for non-city customers; (2) the difference in those rates is from 60% (Hendersonville) to 100% (the other three) more for non-city customers; (3) differential rates are unencumbered by restrictions on their use; (4) the point of negotiated compromise should not be on whether the City has differentials, but on how much differential we have and over what period of time; and (5) one sample negotiated outcome (a) no differential for 2 years; (b) a cap of 15% differential for the next 3 years; (c) a cap of 25% for the next 5 years; (d) a cap of 50% for the next 5 years; and (e) removal of all caps after this 15 year period.

In summary, (1) borrow from existing models - our neighbors; (2) concentrate on core issues versus distraction issues; (3) treat Asheville like other cities in North Carolina; (4) keep an eye on fairness to all City and County water users; and (5) support incremental implementation as the primary point of compromise.

Where do we go from here? Plan A - Call for a return to an open negotiation table with a determined eye on these parameters. Plan B - Begin negotiation on consolidation of City and County government as a means to resolving our water impasse, duplication of services and waste of tax supported resources. Plan C - Carry out the matter through our legal system until we reach a point of conclusion. Plan A represents the most reasonable outcome.

Let's get started and hold to our course regardless of pressures to (1) be nice (let's keep our better eye on being fair and right); (2) surrender to uninformed criticisms; (3) minimize the value of the City owned water system; (4) treat Asheville differently than other cities; and (5) serve our own political interests. It's time to authentically think "regionally" and borrow wisdom from our neighbors."

Vice-Mayor Jones felt that in negotiating you must listen to each others interests. While Councilman Mumpower's plan would be a fabulous outcome, it would mean that we have not heard Buncombe County for the last three years. If we want to advance our region, then we have to understand that Buncombe County is not open to differentials.

Councilwoman Cape believes there is a quality in regionalism that the water system may be a part of. We need to talk about the systematic health of this region through growth management, economic development, resource management, environmental protection, water usage, etc. We should perhaps step back, move ahead with the lawsuit and start the conversation in a different way. She doesn't believe in consolidation of the City and County governments, but we have to learn to work together. She hoped that as we look forward we say that we have this incredible rich resource that is part of the systematic health of this region and how do we come to the table and say how do we manage it as a region.

Mayor Bellamy said that the issue of the disagreement on water in her opinion is over. The Asheville City Council said

were going to take over our water system without the advisory board, e.g., the Water Authority. In her mind, the issue of who is going to own the water system is complete. Since that time, Water Resources Director David Hanks has prepared a list of what we have done with our system.

Mr. Hanks briefly reviewed what has happened with the water system since the City has taken over operation: (1) the City took over operation of water system July 1, 2005; (2) system has over 51,000 customers; (3) over 1,600 miles of water main lines; (4) City approved a Capital improvement fee; (5) the City has reinvested over \$15 Million in system (a) Water Master Plan; and (b) new waterline of almost 2 miles on Fairview Road; (6) water treatment plant upgrades (a) to ensure continued high water quality; (b) upgrading North Fork; and (c) bring Bee Tree Plant online; (7) \$40 Million Revenue Bond - improve system reliability; and (8) system improvements (a) implemented Computerized Maintenance Management System; (b) active Asset Management Program; (c) Cost of Service study; (d) ISO 14001 Environmental Management System; (e) QualSevice - AWWA Peer Review; and (f) Customer Service Response system.

Mayor Bellamy noted that in the last 2.5 years, Mr. Hanks has pointed out how much we have done as a city to improve the water system. The issue at hand, in her mind, is the issue of equity. Is it fair for the City of Asheville to carry the load of improving an aging water system that is actually the collective systems of Buncombe County in some manner? Not all of it, but in some parts we have taken ownership of some systems that were outside the city limits in the 1920's. But more importantly, is it fair looking at other cities of how they deal with growth management and how they deal with paying for city services that others use outside the city limits. She read the last proposal that the City put to the County on July 3, 2007, which addressed the issue of those equity issues: "Legal issues: (1) no differential water; (2) City Water Department; (3) County water facilities - transfer current and future assets; (4) Airport Authority - hold pending Henderson County negotiations; (5) Annexation - developments within one mile, 16+ residential units and/or 10,000+ square feet non-residential and (6) diversion (5%/5 years) for water related infrastructure. The Memorandum of Understanding: (1) waiver of water charges for County and City; (2) bring City trash to County landfill and under long-term CPI adjusted fee structure; and (3) permit and inspect Buncombe County Schools, Asheville City Schools, and A-B Technical Community College as County buildings. The City would transfer to County: (1) Civic Center - operations, maintenance and capital with continued Arena or Performance Hall at current location; (2) Civic Center Parking Deck - transfer with County participation in parking needs analysis and commitment to replace lost capacity with new deck; (3) Golf Course; (4) Nature Center - current operations and associated property; and (5) Recreation Park - pools and other recreation operations, administrative building and associated property. The financial impact would be: Civic Center subsidy - \$500,000; Civic Center capital - \$400,000; Nature Center subsidy - \$500,000; Recreation Park subsidy - \$70,000; and Water fee waiver - \$150,000, for a total City budget savings of \$1,620,000."

Mayor Bellamy said that in 1981 when the original water agreement was signed between the City of Asheville and the County of Buncombe it was done so in a manner to try to find out how to be equitable for the City of Asheville. The reason the amenities were put on the table is because the Civic Center, Golf Course, Nature Center and Recreation Park are not only used by City of Asheville taxpayers, but they are maintained only, on a regular basis, by City of Asheville taxpayers. We do have a facilities fee at the Civic Center of approximately \$1 but that does not begin to cover all the costs that it takes to recover for the Civic Center. When Council was considering transferring those assets to the County it was to get more than just the City of Asheville taxpayers to pay for those amenities. It wasn't to be a red herring, a fluke, or bad negotiating skills. The goal was to try to cast a net on who should help pay for those amenities. One thing the City of Asheville felt was very important to us was the ability to annex areas that are on the perimeter of the City who are tapping into our water system, but who are further out. Former Planning & Development Director Scott Shuford did a presentation which showed how the City of Asheville would be much larger than it currently is had we gone through the process that other municipalities use of if you want to tap into our water system, that means you come into the City of Asheville. The City of Asheville does not have that tool in our toolbox so we were trying to acquire that by legislative means. She asked Interim Planning & Development Director Shannon Tuch to explain why 1/2 mile could not work for us to be able to meet the needs of using a good tool that municipalities across the state currently have in place but don't.

Using slides, Ms. Tuch said that Planning & Development Department was asked to examine the value of voluntary annexation for new developments within 1/2 mile of the City's primary corporate limits in exchange for City water service. We looked at a variety of things in our analysis. Her first image showed the City's primary corporate limits. The second image is the areas under consideration which include properties around the City's boundaries that have been studied and identified as having been developed or are prime for new or re-development and may be suitable for annexation either now or in the very near future. These areas are identified on the officially adopted map which was adopted by City Council in 2006. The third slide shows the 1/2 mile and the fourth slide shows the 1 mile, which more fully resembles the boundary of the areas under consideration. Senate Bill 629 offered the 1/2 mile annexation area and it was the City's interest to consider the possible 1 mile so we looked at both. A big part of this analysis was to look at where development is occurring. Because the large majority both in the 1/2 mile and the 1 mile area fall in areas that are outside our review jurisdiction we don't have the permit information as we would normally have for development projects inside the City. We do have the location of the water lines, as well as the location of new water meters. She showed another slide showing the location of the new water meters that have been installed in the last 3 years in the 1/2 mile and the 1 mile area. We have some concentrated areas of development. You can see that the large majority of the redevelopment is actually occurring in the full 1 mile area. We feel that this is because the large majority of 1/2 mile is currently developed and

already has water lines and water meters. The agreement also doesn't address what to do about the already developed properties, even though portions of these developments fall within the 1/2 mile area while the large majority of the development falls within the 1 mile area. It also doesn't address smaller scale projects. After reviewing this, it's an easy conclusion to see that an agreement based on voluntary annexation of properties within the 1/2 area radius didn't really accomplish much since the large majority of that development is occurring in the 1 mile area, with the 1/2 area already being served with water lines and water meters. Whether you consider the 1/2 mile or the 1 mile, both create problems by establishing isolated jurisdictional areas. We would develop problems of providing services to non-conforming areas. That would occur in either the 1/2 mile or the 1 mile areas. It puts us into a position of making one of two decisions when faced with looking at those voluntary annexations for properties that are not contiguous. The first is because of the expense in providing services to those areas, we may simply have to deny the voluntary annexation. The second is that we may have to look at involuntary annexation in order to bridge the gap. The idea that this would prevent us from having to do as many involuntary annexations is probably a myth. If anything, it may motivate us to do more so that we can effectively provide service.

Mayor Bellamy said that clearly what was being presented as an alternative for us wasn't as beneficial as it could have been, looking at the tools the other municipalities have. The main reason that we felt like annexation was important is we needed some tools to be able to deal with involuntary annexations so we could get people to voluntarily come into the system. Other cities have the tool of when you tap into the system, you come into the city. Another thing that was important was the diversion of funds. Whether we like it or not we have to own the history of Asheville. It's always forgotten that when the depression hit and most municipalities and counties across this country were forfeiting their responsibility to pay back their debt to the federal government, the City of Asheville's forefathers said we shall pay back every cent we owe of water bond money. That put the City of Asheville basically on standstill for almost 50 years until the mid-1970's until we paid off the last water bond. The City of Asheville said we love this country enough to pay off our debt. And, when we said that as a community, that meant that all the resources that we were collecting essentially went into paying that debt. And the only real revenue source that the City of Asheville had at that time was the water fund and that did help pay for City infrastructure, in addition to police cars, firefighters salaries, and basic city services. The City of Asheville gets this bad name of dipping our hands in water coffers. If you look at the history of the City of Asheville, it seems that someone should be proud to say that my City didn't forfeit on its bonds. My city said we will pay back the federal government every nickel, every dime, every \$1,000, every \$10,000 that we owe. But we are criticized as being the bad guys. So when it comes to 1981, we have a water agreement and there are some diversion of funds that were agreed by all parties at the table. The City of Asheville got it's 5% and it did what it said it was going to do. It used the 5% to do what it needed to do for the City of Asheville. So today we get this bad rep that we are going into the City coffers and dipping into our water fund - no we're not. Now we have data to show that all money that has been collected by the 51,000 customers in our water system is going back into the pipes. But at some point we need to expand that to more infrastructure and that is why we said after five years we were willing to say that 5% of that money goes back into infrastructure that is related to the water system. It makes sense to her that what we had happen on Fairview Road is what should happen throughout the City of Asheville. When you put in a major water line in the City of Asheville, you should also get a good street out of it, get the stormwater fixed, as well as the sidewalks. It makes sense to her instead of having to use other pots of money to do that. That is not a diversion of funds. To the citizens of Asheville, her goal is not to spend a lot of money in a lawsuit. What she is trying to fight for is to make sure that, as stewards of the water system, the funds that we have coming into the system that we can use them for water related infrastructure and have the tools to be able to entice developers to come into the City up front of the development occurring. That way we won't have so many contentious involuntary annexations occurring in our community. Her goal is not to bad mouth any other elected officials about their motives or why they do what they do. She's not God and she can't see their hearts, but she is the Mayor and her goal is to continue to work with any elected official to try to resolve the equity issue. As long as she's Mayor, she will continuously and actively work to keep the system in the hands of the City of Asheville - bottom line. That is important to her. Everything else we can talk about but the system should remain as the City of Asheville's system.

Councilman Newman said that there is this ongoing lawsuit and as a result of that, we have had to, and appropriately so, consult with our attorney frequently about legal matters. There have been a lot of open meetings between us, the County Commissioners and the legislators. There has also been a lot of informal conversations not in the public. In the spirit of trying to find that agreement which he sincerely believes we came extraordinarily close to having a meeting of the minds, but ran out of time, he moved to formally express our support for the settlement outline we have before us dated July 3, 2007, and note that the only outstanding issue that remained existed with our legislative delegation - being the discussion of the 1/2 mile vs. 1 mile voluntary annexation. The Asheville City Council and the Buncombe County Commissioners actually had a meeting of the minds on a settlement of the water dispute. We would also invite our state legislators and our County Commissioners to meet with us in public in the next 30 days, or as soon as we can gather the parties together, to discuss this outstanding issue of voluntary annexation. We invite our legislators to hear from our staff and to look at the reasons why we felt that the issue of voluntary annexation capabilities out to 1 mile is so essential to the health of Asheville and it's critical to settling the issues. And, that we affirm, as per this July 3 settlement that if the legislative delegation would support the 1 mile policy and the other items that we have all already agreed to, that the Asheville City Council will agree to end the litigation. This motion was seconded by Vice-Mayor Jones.

Councilman Mumpower believed that the July 3, 2007, is a surrender document that ignores the realities that other cities do and sells Asheville and our future out. He believes we went against our word to negotiate at an open table. They were all behind

closed doors. We should not be giving up except for matters of principle and sound reason and the July 3 offer doesn't remotely resemble that. He thinks the point of compromise is to take our time in getting to the model that every other city-owned water system, with one or two exceptions where the city takes up the whole county, uses in North Carolina. We all have an incentive to be at the negotiating table. He believes the truth is that we have not been at a point of fairness and compromise. He urged Council not to sell Asheville out that this motion does.

Councilman Freeborn said that based on conversations with staff since crafting the July 3, 2007, offer, he is feeling that that is not really the solution. However, we do need to tackle the voluntary annexation issue and the overarching issue of should you be annexed if you tie into municipal services, and water and sewer are municipal services. He could support the motion if it is for moving forward with bigger conversations. He wasn't sure if he could support the motion if it's just us negotiating this one issue of 1 mile vs. 1/2 mile. If we open ourselves back up and ask what are the issues we are trying to wrestle with, he could support a greater conversation about that and the sooner the better is in everyone's interest.

Mayor Bellamy said that understanding the parameters in which we live in, it would be her desire not to have to give away any of the City assets but get partners in fixing the Civic Center and get partners on making sure that the irrigation system at the Golf Course is up to par. The goal would be that the citizens of Asheville would not have to give up those assets in order to get assistance with them. It's been said that the City of Asheville doesn't know what to do with the Civic Center. That's just not true. We know that it needs \$15 Million worth of improvements, so we said we would put \$400,000 annually towards improvements over the next few years. Why don't we have a good enough relationship with the Tourism Development Authority, the Chamber of Commerce, Buncombe County and our legislators in Raleigh to say you shouldn't have to give up this asset that the City taxpayers paid for - we will assist you in making it better. Why should the City government stop paying its water bill if each of you have to pay yours. Why should the City even consider taking its trash to any other municipality? It's our trash - we shouldn't take our trash to any other place. If the County can do a good job on inspecting its own buildings, why not let them. They pay for the schools. Regarding the issue of diversion of funds, if its infrastructure related and associated with the water system and we can track it with our accountants, which should happen immediately because we need to fix the system, our streets and our sidewalks now. We should have partners in this procedure. We shouldn't have to give and take and tussle. What is missing from moving forward? When made an agreement with Henderson County to sell them water it was to meet their needs in order for them to be successful. We sell water to Black Mountain and they charge a differential rate with our water. We sell water to Woodfin. We sell water to almost all of our partners in the area. We're their back-up plan. So, if we can do that with other local governments, she's going to hold out hope amongst hope that our legislators and our County Commissioners will come to the table for us to get to a place that is better than where we are and better than where we've ever been. Tonight when the County contributed \$35,000 to look at the issue of the Asheville Design Center alternative 4-B, that tells her that we are stepping in the right direction. She is willing to continue to talk to people on a regular basis to make a difference in this issue. If the lawsuit is settled, that doesn't mean that the conversation is over for her. It means that is the State of North Carolina's opinion, but we still need to work regionally together. That would be her goal and she won't support the motion.

Councilman Davis said that the reality is that he has not been supportive of giving away these assets for \$1.6 Million. He is not supportive of this. We should be negotiating this in the open and for what we contribute to this area. He and others have worked very hard at getting the Civic Center to a better point and it hurts to see that we couldn't get regional cooperation. And to see us give up a parking garage when we are looking to build parking garages doesn't resonate well with him. He is not supportive of the motion.

Vice-Mayor Jones said we all have principles we hold very dearly. The public wants us to figure this out. No one liked spending the inordinate amount of time spent on this issue but we are the elected people to do the people's business and the people's business is to try to come together on this issue. We have to get a better plan around forced annexation. She feels that the best thing we can do for the future of the Civic Center is to get a different owner of that property in order to get funding. She is willing to keep working to get to a better place.

The motion made by Councilman Newman and seconded by Vice-Mayor Jones failed on a 2-5 vote, with Councilman Newman and Vice-Mayor Jones voting "yes" and Mayor Bellamy, Councilwoman Cape, Councilman Davis, Councilman Freeborn and Councilman Mumpower voting "no."

Mayor Bellamy said that even though the motion failed, we will continue to talk. She has no problem with writing another letter to all elected officials in County government and our state legislators in Raleigh inviting them to a meeting. She doesn't need a motion to make that happen. She has talked with Representative Goforth and Senator Nesbitt since the closing of the session so it's not over for her. She's holding out hope that we're going to get to a good place and it may not look like this. She thinks there will be more creative ideas happening.

Mayor Bellamy said that we will continue to look for situations to address the equity issue. She hoped that Council feels that we will keep the system and look at regional issues.

B. CLAIMS

The following claims were received by the City of Asheville during the period of August 3-9, 2007: Kathryn Roberts (Transit Services), Frank Casey (Water), AT&T (Streets), Barbara Smith (Streets), Barbara Taylor (Water), Asheville Sports Prop (Streets) and David Parks (Sanitation).

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

C. LAWSUIT

The City received a Complaint on August 10, 2007, which is generally described as follows: Magnolias' Raw Bar & Grille, Inc. v. City of Asheville. The nature of the proceeding is a complaint for declaratory judgment and injunctive relief to declare the noise ordinance unconstitutional as a violation of due process of law. This matter will be handled in-house.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mayor Bellamy was pleased to attend the graduation of the students from the City of Asheville Youth Leadership Academy in which they worked with various City departments and organizations. She felt that the students walked away with a desire to do better and with a commitment to come back next year. It shows that when people are given the opportunity to thrive and be successful, they will take it every day. She was pleased to see the success of that program.

Mayor Bellamy said that we had people who were part of an action group go to the Bank of America offices downtown and chain themselves in the building to protest climatic change through the investment in coal fire plants in places that are not even in our community. She wondered why the group protested in Asheville when the Bank of America headquarters is two hours away in Charlotte, North Carolina. Protesting of this nature takes our city dollars and our city resources. In addition, Progress Energy is doing more investment locally in cleaning up our smokestacks and Asheville is the model place in how to have a cleaner power plant. Her concern is that she doesn't want this to become a pattern in the City of Asheville of when protestors refuse to leave private property, they lock themselves in with chains. That is wrong. In addition, she noted that at no time did our police officers use tazers. Our Environmental & Energy Committee is looking at ways to address this issue, one of which is through our carbon emissions. There are creative ways to address this in our community and we don't have to have these types of demonstrations that negatively impact people.

Mayor Bellamy said that we all love Asheville and she is asking citizens and visitors to help clean up Asheville. The amount of litter in our community is getting out of control. We are going gang-busters on putting streets and sidewalks in, adding more police and firefighters and basic city services, but we can't pick up litter on private property. The public holds Council accountable for all kinds of issues, so she is putting the litter accountability back on the public. It requires each of us to do a better job in cleaning up Asheville. If you need trash cans, let us know. We own that. Cigarette butts are litter. Recycle your bottles and cans. Dispose of litter properly. Ingles has bins to where you can bring your used plastic bags and Earth Fare encourages you to bring in canvass bags. This is your city. Take pride in it. Teach your children to pick up litter.

Councilwoman Cape did not want to deter the right of people to protest within the City of Asheville. America is a place for people to stand up and voice their dissent in all areas. Although she's never been a protestor, but doesn't want to say that others can't protest. That distinguishes us from many other countries in the world.

Councilman Mumpower appreciated the Mayor highlighting that the people weren't just protesting but intruding on the rights of others and disrupting business. He felt our police officers are to be commended for response to those activities.

Rev. Christopher Chiaronmonte urged Council not to restrict people's rights.

Mr. Joe Minicozzi, President of the Coalition of Asheville Neighborhoods, read the following letter dated August 14, 2007, to Mayor Bellamy. "On July 9, 2007, the Coalition of Asheville Neighborhoods (CAN) Board voted to draft and deliver a written response of the City of Asheville for (1) the City's plan of action, timeline, and deadline for attaining compliance for Staples for sign and setback violations that were outlined in our May 2006 presentation; (2) the City's plan of action, timeline, and deadline for attaining compliance for GreenLife for the bufferyard and driveway violations that were outlined in the September 2005 presentation; and (3) we would like a response to the above two items in writing and if you are choosing to do nothing, please say so in writing.

"On August 22, 2006, Dr. David W. Owens, professor of Public Law and Government from the Institute of Government at UNC Chapel Hill, delivered his report confirming the non-compliance issues with Staples, Prudential and GreenLife that CAN had been articulating since before the August 22, 2005 public comment presentation (exactly one year later). In the spirit of good faith, CAN offered a path of remediation for all three projects; we spent a good deal of money seeking a public hearing to appeal the decisions which resulted in many months of delay and dispute with city staff. You announced at the close of the Owens

presentation on August 22, 2006 that 'Council will take ownership from here on out', and plans for action to correct the non-compliance would be pending. CAN was asked for patience in the matter and was satisfied that Council had taken ownership of the situation to move in a direction of correction. We are closing in on a year from that date.

"Great progress was made with the Prudential case when their signage was brought into compliance and there was talk of conversations with GreenLife and Staples. Staples rebuffed the City's attempt to talk and seek compromise for setback violations by altering its landscaping and signage. GreenLife presented a lot of talk and no real action. The City never issued the required Notice of Violation per article 18 of the UDO to either party, even though we encouraged you to do so to encourage remediation of the projects. To our best knowledge, no fines or tickets have been given to trucks on Maxwell, nor do we know if GreenLife has been billed for the damage they did to the Maxwell sidewalk and the city's cost of service to repair that sidewalk. Mr. Swann even offered to pay for the sidewalk repair if the City would bill him. Most of our communications since August of 2005 have been informal, and the lack of information or clear path of attaining compliance has become more evident to our Board as the year has passed.

"On April 10, 2007, I attended Council and asked for closure on GreenLife and Staples and a plan for seeking that closure in writing from the City. Additionally, Council asked Mr. Bob Oast to draft a letter clarifying the use of sidewalks for parking delivery trucks as 'a reasonable use of the sidewalk' according to the UDO as designed and used by GreenLife. Councilman Newman asked Mr. Richardson to get dates from GreenLife on the submission of their plans for site correction. On June 12, 2007, I attended public comment, and again, asked for the above in writing. We have yet to receive any written correspondence addressing these requests. Please deliver them as soon as possible.

"Additionally, since these matters have been open, other matters of concern have come to us and we seek the following: (1) given the issues involved in enforcement of 966 Tunnel Road, we respectfully request that Council repeal the process for allowing Conditional Zoning. This project highlights the significant issues that come with creating site specific ordinances that are difficult to administer and the product that was approved for this condition could not have met rezoning standards in its situation. Nor does this example further any of the City's larger goals of mixed-use development, green architecture, smart growth, affordable housing, etc. This is purely speculative zoning change that perpetuates the sprawl along Tunnel Road that the neighborhood was seeking to avoid. Give this example of use, CAN seeks removal of Conditional Zoning from the UDO until proper standards could be crafted for better compliance/enforcement as well as standards for fulfilling our communities goals; and (2) CAN requests that City Council and Boards and Committees appointed by Council receive proper training as to the legal process of the UDO from a qualified member of the Institute of Government. This should include, but not be limited to, matters of due process of quasi-judicial hearings, finding of fact, procedural requirements of enforcement, Robert's Rules of Order, etc. These training sessions should be video taped and as new members are introduced to a Board, they should receive the same training.

"We regret that these requests come in writing, but we have waited for some months for a response to our requests via email, in conversations, and during public comment at City Council meetings. We understand that these projects have been very frustrating. They have been frustrating to CAN members as well. The frustration comes with the addition of the years that we have given to help get the UDO adopted and help make recommendations for modification to suit our city's growth. It is extremely frustrating to work to adopt rules for our City and when non-compliance is pointed out, citizens are treated to a pattern of stonewalling by our governing. The first step in prevention of non-compliance is adequate plans review. The second is adequate inspections during construction. The final step is utilizing enforcement means and ultimately fines as outlined in Article 18. GreenLife, Staples, and the Prudential buildings are the poster children of non-compliance and our request was to make them right by Asheville City laws. Our intent is in a transparent process of a fair government where our rules apply to everyone and due process is followed. In order to change the standard behavioral practice from 'it is easier to ask forgiveness than permission', this behavior should be reprimanded, not reinforced. A just and equitable society cannot function without transparent, impartial, and consistent governance. We will continue in our requests to have you enforce our laws and look forward to your timely written response."

Mayor Bellamy said that we will have a GreenLife and Staples update on August 28, 2007, agenda.

After a short discussion about the mandated stormwater ordinance coming back to Council on August 21, 2007, it was the majority of Council's consensus to begin conversation on that date to determine what we need to do to at least get ourselves into compliance and still have time within which to craft our own ordinance. Mayor Bellamy said that she has asked staff to prepare a breakdown of what the minimum is of the state mandate, what the committee has recommended, what they have heard from the community, and enforcement issues. After discussion, Council may be able to move forward.

Vice-Mayor Jones announced that Asheville City Schools start August 15, 2007, and Buncombe County Schools start August 16, 2007, so please drive safely.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 11:19 p.m.

CITY CLERK

MAYOR