

Regular Meeting

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

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Mayor Bellamy gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING SEPTEMBER 15-29, 2007, AS "FALL LITTER SWEEP"**

Councilman Freeborn read the proclamation proclaiming September 15-29, 2007, as "Fall Litter Sweep" in the City of Asheville. He presented the proclamation to Buncombe County Maintenance Engineer Chad Bandy who briefed City Council on some activities taking place during the event.

**B. PROCLAMATION PROCLAIMING SEPTEMBER 24, 2007, AS "FAMILY DAY - A DAY TO EAT DINNER WITH YOUR CHILDREN"**

Councilman Mumpower read the proclamation proclaiming September 24, 2007, as "Family Day - A Day to Eat Dinner with your Children" in the City of Asheville. He presented the proclamation to Parks & Recreation Director Roderick Simmons.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 11, 2007**

**B. RESOLUTION NO. 07-170- RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH CHARTER COMMUNICATIONS FOR FIBER OPTIC CONSTRUCTION TO LINK THE BUNCOMBE COUNTY AND THE CITY OF ASHEVILLE JOINT PUBLIC SAFETY ACCESS POINT**

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Charter Communications for fiber optic construction to link the Buncombe County and City of Asheville Joint Public Safety Access Point (PSAP) and associated budget amendment in the amount of \$171,235.

Significant communications capabilities are required in order to successfully move the Public Safety Access Point to the Erwin Hills location. Requirements include high capacity radio equipment; GIS; and Computer Aided Dispatch capabilities. Fiber optic has been selected by County and City staff as the primary means of communication because of its reliability and capacity.

Buncombe County is responsible for procuring infrastructure for the PSAP project; however, the City can procure this fiber construction at a considerable discount from market pricing (approximately a third of market price) due to existing contractual arrangements between the City and Charter Communications. Therefore, it is in citizens' best interest for the City to be the purchasing agency for this construction, and for Buncombe County to reimburse the City.

**Pros:**

- Most stable and capacious way to handle public safety sensitive communication
- No net impact on the budget after reimbursement
- Less expensive due to contractual arrangements than equivalent microwave communications without weather impact issues

**Con:**

- Fiber optic can be accidentally cut by heavy equipment such as backhoes, and service restoration can take many hours. (Thus, a backup means of communication is also being planned by the County).

Staff recommends City Council approve a resolution authorizing the City Manager to sign a contract with Charter Communications for fiber optic construction to link the Buncombe County and City of Asheville Joint Public Safety Access Point (PSAP) and associated budget amendment in the amount of \$171,235.

#### **RESOLUTION BOOK NO. 30 - PAGE**

#### **C. ORDINANCE NO. 3534- BUDGET AMENDMENT FOR FIBER OPTIC CONSTRUCTION TO LINK THE BUNCOMBE COUNTY AND CITY OF ASHEVILLE JOINT PUBLIC SAFETY ACCESS POINT**

Summary: See Consent Agenda "B" above.

#### **ORDINANCE BOOK NO. 23 - 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.

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

### **III. PRESENTATIONS & REPORTS:**

#### **A. NOISE ORDINANCE APPEALS BOARD ANNUAL REPORT**

Due to illness, Mr. James Fink, Chairman of the Noise Ordinance Appeals Board, was unable to attend the meeting.

### **IV. PUBLIC HEARINGS:**

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

Mayor Bellamy said that this public hearing and the following two 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 were related. The public hearings were held on August 14, 2007, and postponed until this date. All would need to be voted on separately.

City Manager Jackson said that on August 14, 2007, planning staff presented the results of a lengthy study that examined options for guiding appropriate and desirable development along major corridors in the City of Asheville with a specific focus on Merrimon Avenue.

Since these items originally appeared on City Council's agenda on August 14, 2007, city staff has conducted additional research on the proposed zoning and possible exclusions for specific areas along the corridor. Staff has also completed some preliminary research on form based codes and their future applicability.

While conducting this additional analysis, staff has recently learned of new and unanticipated concerns from the affected business owners. Additionally, we have learned of interest on the part of the coalition of business owners and neighborhood groups to continue dialogue about the issues.

In light of these developments combined with an interest in investigating utility and form based code options, it is staff's recommendation that City Council withdraw these items for 90-120 days. The additional time will allow staff to develop a communication plan, solicit community input and conduct informational meetings in an effort to ensure the most inclusive process.

The postponement of these items will not affect the consideration of individual applications along the corridor.

Councilman Freeborn said that he recently attended a meeting with the Merrimon Avenue business owners and now feels confident that the process utilized to get to this point is flawed. There was frustration and disappointment exhibited from the business owners and the neighbors. Many property owners were not even aware of their current zoning. He felt that the City has enough resources available (website, TV channel, newspaper, e-News, etc.) to educate the public. He felt we needed to do a

better job as an organization to educate the public so we are not continuing to divide the groups, but to form a better product.

The following individuals spoke for a continuance of the public hearings (most requesting the matters be remanded back to the Planning & Zoning Commission) for various reasons, some being, but are not limited to: business owners and property owners basically agree that they want Merrimon Avenue more pedestrian friendly, greener, wider sidewalks with all utilities buried; Merrimon Avenue should not have cookie-cutter architecture; current Planning Director was not involved from the beginning of the project; business owners do not like zero setback; business owners do not agree with placing all the buildings close to Merrimon Avenue; election season takes away concentration on issues; Mixed Use District is down-zoning many properties; City needs to improve their communication efforts to property owners; need for ordinance education;

Mr. Chris Peterson, representing the Merrimon Avenue business owners group  
Mr. Albert Sneed, representing owners of Deal Buick property on Merrimon Avenue  
Rev. Christopher Chiaromonte  
Mr. Frank Dozier, business owner on Merrimon Avenue  
Mr. Foster Shriner, business owner on Merrimon Avenue (presented Council with a petition containing approximately 50 signatures opposing the Mixed Use District for Merrimon Avenue)  
Mr. Jim Groce, property owner on Merrimon Avenue  
Mr. Carr Swicegood, business owner on Merrimon Avenue  
Mr. John Kledis, business owner on Merrimon Avenue  
Ms. Cynthia Kovach, business owner on Merrimon Avenue  
Mr. Keith Thomson, resident off Merrimon Avenue  
Mr. Bill Gatewood, business owner on Merrimon Avenue  
Mr. Gus Barlas, business owner on Merrimon Avenue  
Mr. Gus Morris, Jr., business owner on Merrimon Avenue

Councilman Davis moved to continue this matter until January 15, 2008. This motion was seconded by Councilman Mumpower.

When Councilman Mumpower questioned a continuance or remanding the matters back to the Planning & Zoning Commission, Councilman Davis didn't want to undermine action of a commission, but in this case, he felt it may be better to defer to staff judgment. He said that the Comparison Table of Existing vs. Proposed Development Requirements for Merrimon Avenue that Interim Planning & Development Director Shannon Tuch prepared is a good attempt at clarifying some of the concerns the business owners expressed. He suggested a smaller group of business owners meet with Planning staff to review the requirements. He felt we may be able to move the matters forward quicker without actually Planning & Zoning Commission involvement.

Mayor Bellamy thanked Councilman Davis and Councilman Freeborn for trying to talk to the business owners to see where they stood. A couple of weeks ago we heard from neighborhood representatives and this week we have the business owners represented. It is her hope that at Council's next meeting we will have both groups represented so we can get to a good partnership.

Councilman Newman said that he has not heard any support of the proposal that new buildings be at least two stories. If that is taken out, he thinks that may relieve some concerns.

In response to Councilwoman Cape about rezoning the Deal Buick property to Urban Village District, Ms. Tuch explained that the project has been reviewed by the Technical Review Committee, with conditions, and is moving forward.

When Councilwoman Cape asked about zoning signs on Merrimon Avenue, Ms. Tuch explained that the signs do go up and down for different public meetings but agreed that when signs are up for so long, people begin to ignore them. If Council approves the continuance, the signs will be removed until closer to the January 15 date. She said that we will post the new signs 10 days prior to the January 15 meeting (which is the statutory requirement). She explained that the sign posting is only one way of advertising. We also advertise in the newspaper and notify the individual property owners and the property owners within 200 feet of the affected property.

Councilwoman Cape suggested we advertise on our cable channel the fact that whenever people see zoning signs that action will be taken on that property in 10 days.

The motion made by Councilman Davis to continue this matter until January 15, 2008, and seconded by Councilman Mumpower carried unanimously.

**B. 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 A and C.

Councilman Davis moved to continue this matter until January 15, 2008. This motion was seconded by Councilman Mumpower and carried unanimously.

**C. 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 A and B.

Councilman Davis moved to continue this matter until January 15, 2008. This motion was seconded by Councilman Mumpower and carried unanimously.

**IV. UNFINISHED BUSINESS:**

**V. NEW BUSINESS:**

**A. REVIEW FINANCIAL MANAGEMENT OF PARKS & RECREATION**

**ORDINANCE NO. 3535 - BUDGET AMENDMENT TO PROVIDE A BUSINESS MANAGER POSITION**

Chief Financial Officer Ben Durant reviewed the report on Parks and Recreation's capital project management practices with key findings and recommendations.

The City Manager's Office engaged the Finance Department to review Parks & Recreation's capital project management practices and as a result produced a written report of findings and recommendations. The overall objective of the report was determine what improvements, if any, should be made to Parks & Recreation's capital project management practices in order to strengthen the department's overall effectiveness.

The general conclusion of the report is that Parks & Recreation's overall systems for managing capital projects need substantial improvement.

A key recommendation in the report is to permanently fund a Business Manager position in order to strengthen Parks & Recreation's overall financial management capacity. A budget amendment to provide eight months worth of funding for the Business Manager position is included with this staff report.

The executive summary of the report is as follows:

"The City Manager's Office engaged the Finance Department to review Parks & Recreation's (P&R) capital project management practices and produce a written report of findings and recommendations. This request was in response to recent budget overruns, funding shortfalls and implementation delays in some key Parks & Recreation capital projects.

**Objectives**

Specific objectives of this review were to determine:

- If the City's internal controls are adequate or if additional measures should be implemented;
- If Parks capital project expenditures were properly authorized;
- What improvements, if any, can Parks & Recreation make to its capital project management practices based on best practices research.

## Scope and Methodology

The scope of this study is focused on how P&R manages its projects *after* the decision has been made to pursue a particular capital investment. This study does not provide an evaluation of how Parks & Recreation plans for and prioritizes its projects *before* approval. Three projects (i.e. Richmond Hill Park, Memorial Stadium, and Azalea Park) were selected to provide a basis for evaluation. The study methodology included reviews of project budget reports, as well as interviews with five staff members in Parks & Recreation involved directly or indirectly in capital projects management.

Section 1 of this report provides profiles of the Richmond Hill, Memorial Stadium and the Azalea Park projects. Section 2 presents key findings & recommendations of the review, followed by a departmental response to the recommendations.

## General Findings and Conclusions

General findings and conclusions area listed below. Specific findings are delineated in the report.

- P&R has operated independently of established budget policies and procedures in the management of some capital projects;
- P&R's overall systems for managing capital projects needs improvement;
- The management and tracking of revenues that support a capital project tends to get less focus than other aspects of capital projects management, creating deficits in some projects.

This report recommends that P&R:

- P&R should reduce its reliance on procurement cards and enhance its use of the purchase order system. Further, P&R should attend additional training programs on proper management of procurement card usage.
- P&R should fully account for the costs of each authorized capital project in the correct capital project budget. P&R staff should continuously review and monitor their capital projects, submitting requests for budget adjustments through the proper channels.
- P&R should seek consultation from the Finance Department in reviewing all requests for budget amendments that include private donations as a funding source to ensure that a written agreement or letter of commitment is in place. Budget amendments for private donations submitted to City Council should include an attached written agreement as supporting documentation.
- P&R staff should submit additional project information to City Council regarding Memorial Park as part of the First Quarter Financial Report. The report should discuss options for funding the current "deficit" in this project.
- P&R's practice of maneuvering budget authority derived from grant funds to temporarily cover non-grant related expenses should be discontinued.
- P& R should develop a more effective system for managing capital projects that ensures accountability and promotes solid project tracking, monitoring and reporting.
- Though ultimately the responsibility of the department, more financial oversight of capital projects by the Finance Department is desirable. The Budget Office and the P&R Business Manager (when hired) should meet regularly to review the financial status of various capital projects."

Parks & Recreation Director Roderick Simmons said that the Finance Department has their full cooperation in complying with the recommendations of the report. They will put some checks and balances in place in order to be prudent with the taxpayer's dollars. They would like to hire a business manager to oversee the Capital Improvement Plan (CIP) and their budget. Before projects are developed, they want to make sure they have a clear funding and operating plan in place. That is one key

responsibility for the new position. In the quarterly financial report, they will bring Council the CIP funding plan and outline Memorial Stadium and the Reid Center, e.g., how they will be funded with recommendations and guidance from Council. He asked for Council's approval of the Business Manager position to help them with the recommendations in the report.

Mr. Keith Thomson explained the benefits of the Parks & Recreation After-School programs.

Mayor Bellamy pointed out that Asheville High School's new principal Ms. Carol Ray has been nominated for the Principal of the Year Award and thanked her for taking on this new leadership role.

In response to Councilwoman Cape, Mr. Durant said that other City departments manage their financial practices through a variety of positions. What makes the Parks & Recreation Department unique is that they have a lot of facilities that are revenue producing functions and require more intensive management than other departments. He felt a Business Manager would be appropriate for the Parks & Recreation Department.

City Manager Jackson responded to Councilwoman Cape's concern of housing the building maintenance function in the Parks & Recreation Department.

Councilman Mumpower explained the problem with a clear plan is that many of these projects do not lend themselves to clear plans, using Memorial Stadium as an example. Even with someone not paying for something they committed to, he felt this is a good plan and hoped it will come to life. If we can get the Memorial Stadium project moving, he would personally take on the responsibility of raising \$150,000 for the entranceway and felt that once started, other community members will help.

Mayor Bellamy said that there is a growing sense in the community that if the City does the basic city services, there are other community members willing to help ensure the upgrades.

Vice-Mayor Jones felt that we need to be operating on sound business principles other than political aspirations.

Mayor Bellamy said that City staff is not prepared at this time to look at the projects in detail. They will come back to Council to discuss the individual projects. What is before Council now is whether Council supports the results of the review and the request of a Business Manager position in the Parks & Recreation Department.

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

Councilman Freeborn moved to approve the budget amendment for the Business Manager position in the Parks & Recreation Department. This motion was seconded by Councilman Newman.

Councilman Davis hoped we can address the individual projects soon and that they can move forward quickly, noting that some fund-raising may be involved, or there may be some re-addressing of priorities.

Chief Financial Officer Durant said that they felt the best time to deal with those issues would be during the quarterly report, since we will have a good picture of how our revenue and expenditures are doing and where we might be able to find additional funding to support additional needs.

There was a brief discussion, initiated by Councilman Mumpower, of who historically handled the finance functions in the Parks & Recreation Department. In summary, Mr. Simmons said that he is looking at the entire Parks & Recreation Department to seek efficiency.

The motion made by Councilman Freeborn to adopt Ordinance No. 3535, and seconded by Councilman Newman, carried unanimously.

## **ORDINANCE BOOK NO. 23 - PAGE**

### **VI. OTHER BUSINESS:**

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

#### **Stormwater and Erosion Control Ordinance**

The following individuals spoke in favor of (1) notifying, in writing, all property owners over the 200 miles of streams that

are affected by the stormwater and erosion control ordinance, (2) the composition of the new watershed policy committee include surface water property owners; and (3) staff prepare a short summary of the stormwater and erosion control ordinance and how it will affect property owners:

Ms. Jane Hildebrand, resident in the Chunns Cove area  
Mr. Pete Hildebrand, resident in the Chunns Cove area  
Mr. Kermit Brown  
Ms. Laurie Miller

Ms. Deborah Squire spoke against the stormwater and erosion control ordinance. She urged Council to go to the mismanagement of soil and water construction at the source and not distribute them to the homeowners downstream and penalize them and take their property out of their hands to cure an illness they are not responsible for.

It was the consensus of Council to prepare a communication plan, not just for Planning & Zoning Commission issues, but for issues in the entire organization. City Manager Jackson said that he will bring back to Council an overall plan and seek their direction and feedback as to whether that is an acceptable plan.

#### **Other items**

Rev. Christopher Chiaromonte spoke about the homeless issue in Asheville and how it is the reputation of the Asheville Police Department to move the homeless out of Asheville. He felt that taking five months to install two restrooms near Pritchard Park is too long.

There was a brief discussion, initiated by Councilman Newman, about meeting with our legislators regarding involuntary annexation. Mayor Bellamy said that a meeting date is being arranged and hoped that Council would be open to looking at the larger issue of growth with our area municipalities. She said that City staff will present their analysis of the 1/2 mile vs. the 1 mile annexation and will leave it up to Council on whether to support it or not.

Councilman Mumpower presented the September Asheville-Buncombe County Drug Commission poster.

#### **Closed Session**

At 6:54 p.m., Councilman Mumpower moved to go into closed session for the following reason: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: Bellsouth Telecommunications Inc. and the City of Asheville - The statutory authorization is contained in G.S. 143-318.11(a) (3); and (2) To prevent the disclosure of information that is confidential pursuant to N.C. Gen. Stat. sec. 143-318.11 (a) (1) - The statutory authority is contained in G.S. 143-318.11(a)(4). This motion was seconded by Councilman Freeborn and carried unanimously.

Resolution No. 07-171 - Resolution authorizing the settlement of the BellSouth Telecommunications Inc. vs. City of Asheville lawsuit.

#### **RESOLUTION BOOK NO. 30 - PAGE \_\_\_\_**

At 7:15 p.m., Councilwoman Cape moved to come out of closed session. This motion was seconded by Councilman Freeborn and carried unanimously.

#### **VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 7:15 p.m.

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CITY CLERK

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MAYOR