

Regular Meeting

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

Absent: Councilman Jan B. Davis (participated in Public Hearing B via speaker phone)

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Vice-Mayor Jones gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING SEPTEMBER 25, 2007, AS “WILLIAM ‘COOKIE’ MILLS DAY”**

Councilman Mumpower read the proclamation proclaiming September 25, 2007, as "William 'Cookie' Mills Day" in the City of Asheville. He presented the proclamation to Mr. Mills for being a leader in our community in battling drugs.

**B. PROCLAMATION PROCLAIMING SEPTEMBER 29, 2007, AS “HONOR AIR DAY”**

Mayor Bellamy read the proclamation proclaiming September 29, 2007, as "Honor Air Day" in the City of Asheville. She presented the proclamation to Mr. Bob Haggard and members of the Rotary Club of Asheville, who briefed City Council on some activities taking place during the day.

**C. PROCLAMATION PROCLAIMING SEPTEMBER 24-29, 2007, AS “DOLLAR WISE WEEK - SAVINGS FOR KIDS AND FAMILIES”**

Mayor Bellamy read the proclamation proclaiming September 24-29, 2007, as "Dollar Wise Week - Savings for Kids and Families" in the City of Asheville. She presented the proclamation to Ms. Celeste Collins and Mr. Brad Blackburn who briefed City Council on some activities taking place during the week.

**D. PROCLAMATION PROCLAIMING SEPTEMBER 15 - OCTOBER 15, 2007, AS “HISPANIC HERITAGE MONTH”**

Vice-Mayor Jones read the proclamation proclaiming September 15 - October 15, 2007, as "Hispanic Heritage Month" in the City of Asheville. She presented the proclamation to Ms. Althea Gonzalez, Mr. Tyrone Greenlee, Pastor Russell Hilliard, Mr. Isaac Coleman, and Ms. Edna Campos, on behalf of the entire Latino community, who briefed City Council on some activities taking place during the month.

**E. PROCLAMATION PROCLAIMING OCTOBER 13, 2007, AS “AIDS AWARENESS DAY”**

Councilman Newman read the proclamation proclaiming October 13, 2007, as "AIDS Awareness Day" in the City of Asheville. He presented the proclamation to Ms. Emmaleigh Argonaut, on behalf of the Western North Carolina AIDS Project, who briefed City Council on some activities taking place during the day. Mayor Bellamy thanked Ms. Argonaut for their outreach in the community.

**F. PROCLAMATION PROCLAIMING OCTOBER 16, 2007, AS “EMPTY BOWLS LUNCH & WORLD FOOD DAY”**

Councilman Freeborn read the proclamation proclaiming October 16, 2007, as "Empty Bowls Lunch & World Food Day" in the City of Asheville. He presented the proclamation to Ms. Kitty Schaller, Executive Director of Manna Food Bank, who briefed City Council on some activities taking place during the day.

**G. PROCLAMATION PROCLAIMING OCTOBER, 2007, AS “SISTER CITIES MONTH”**

Councilwoman Cape read the proclamation proclaiming October, 2007, as "Sister Cities Month" in the City of Asheville. She presented the proclamation to Mr. Dick Hall, who briefed City Council on some activities taking place during the month.

## **II. CONSENT AGENDA:**

At the request of Councilman Mumpower, Consent Agenda Item "D" was removed from the Consent Agenda for an individual vote.

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 18, 2007**
- B. RESOLUTION NO. 07-172- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BUNCOMBE COUNTY FOR THE PROVISION OF PARATRANSIT SERVICES**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Buncombe County for the provision of paratransit services.

Mountain Mobility is a county operated rural transit system. The system works cooperatively with Asheville Transit to provide fixed route service in Black Mountain and Candler to extend transit accessibility into the county. They also provide public transportation for a large number of non-profit and governmental agencies such as the council on aging, Services for the Blind, and the Buncombe County Health Department. They also provide paratransit services for the Asheville Transit System (ATS). These services are required of any fixed route provider such as the Asheville Transit System by the Americans with Disabilities Act of 1990 (ADA), and more particularly by Federal Transit Administration (FTA) regulations.

Mountain Mobility has provided these services to Asheville Transit since the 1990's when the ADA requirements began to be promulgated. The latest contract with Mountain Mobility was signed in 2002. At the last Triennial review the FTA deemed the contract incomplete because it did not include an enumeration of the federal requirements which pass through to any agency or contractor with whom Asheville Transit spends federal funds. In turn, Mountain Mobility had also produced an updated contract as well.

The new contract sets the method for determining fares (by the mile), commits the county to purchasing, maintaining and operating equipment, providing services to qualify ADA customers and schedule trips according to ADA guidelines, and incorporates all Federal regulations.

Each party may cancel on thirty days notice.

### Pros:

- Allows the City to provide required paratransit service without a large capital investment
- Provides a comparable standard of transportation for people with disabilities which will not allow them to ride the bus
- Furthers intergovernmental cooperation to achieve a common goal of increasing mobility for all persons

### Con:

- There are no disadvantages to the City of Asheville.

Staff recommends City Council approve a resolution authorizing the City Manager to enter into an agreement with Buncombe County for the provision of paratransit services.

## **RESOLUTION BOOK 31 - PAGE**

- C. RESOLUTION NO. 07-173 - RESOLUTION FIXING THE DATE OF A PUBLIC HEARING FOR OCTOBER 23, 2007, FOR VOLUNTARY ANNEXATION OF PROPERTY LOCATED AT 420 AIRPORT ROAD**

Summary: The consideration of a resolution fixing the date of a public hearing on October 23, 2007, for voluntary annexation of property located at 420 Airport Road.

Airport Road, LLC, has petitioned the City of Asheville for the annexation of one lot located at 420 Airport Road in South Buncombe County containing a total of approximately 1.97 acres. The area is not contiguous to the primary corporate limits of the City and therefore is subject to the standards for annexation of noncontiguous areas contained in NCGS 160A-58.1.

Pursuant to NCGS 160A-58.2, such petitions must be investigated by the City Clerk for sufficiency in accordance with

state law. This investigation has been completed and the Certificate of Sufficiency accompanies this petition request.

The next step in this process is for City Council to fix the date for the public hearing on this matter. Should City Council decide to proceed with this request, the effective date for the annexation would be October 31<sup>st</sup> of 2007.

Pro:

- Provides for the orderly growth of the City and the tax base through the acceptance of appropriate areas into the corporate limits where owners desire annexation.

Con:

- Marginal increase in service costs (too small to measure or respond to).

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

Staff recommends City Council approve a resolution fixing the date of a public hearing on October 23, 2007, for voluntary annexation of property located at 420 Airport Road.

**RESOLUTION BOOK NO. 31 - PAGE**

**D. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH PLANTE & MORGAN, PLLC, FOR PROFESSIONAL SERVICES FOR THE PROJECT KNOWN AS REPLACEMENT/UPGRADE OF CITY-WIDE INFORMATION SYSTEMS**

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

**E. RESOLUTION NO. 07-175 - RESOLUTION MODIFYING THE 2007 CITY COUNCIL MEETING SCHEDULE TO CANCEL THE OCTOBER 9, 2007, FORMAL MEETING AND THE OCTOBER 30, 2007, COMMUNITY MEETING**

**RESOLUTION BOOK NO. 31 - PAGE**

**F. RESOLUTION NO. 07-176 - RESOLUTION APPROVING AGREEMENT FOR APPOINTMENT OF CO-TRUSTEE FOR THE ESTATE OF JACK RUSHER**

Summary: The consideration of a resolution approving agreement for appointment of co-trustee for the estate of Jake Rusher.

As Council is aware, the City was a beneficiary of the estate of Jake Rusher, the former owner and operator of the Pines club and swimming pool, now the site of Jake Rusher Park. The City has already received substantially all that it was due under Mr. Rusher's will, primarily as a result of the sale of Mr. Rusher's Rutherford County property, which was completed last year.

Mr. Rusher also had created a trust, which was funded partially with assets from his estate. The primary purpose of the trust was to be a vehicle for the distribution of assets remaining in Mr. Rusher's estate, after all specific bequests (including the City) had been satisfied.

Mr. Rusher's will provide for the appointment of Merrill Lynch to serve as a corporate co-trustee for the trust, along with Mr. Rusher's nephew. Merrill Lynch has declined this appointment, and the nephew (also the executor of the will) has been carrying out the terms of the trust. However, there was one duty – administration of a scholarship fund – that was expressly delegated to a corporate co-trustee. In this circumstance, under N.C. law, appointment of the corporate co-trustee may be done by petitioning the Clerk of Court, or by agreement of the beneficiaries of the estate. In order to avoid the delay and expense of petitioning the Clerk of Court to appoint the corporate trustee, Mr. Rusher's nephew seeks the City's consent to the appointment of BB&T as the substitute corporate trustee, and the purpose of this resolution is to authorize the City Manager to sign the agreement.

Pros:

- Will allow more expeditious closing out of estate
- Will avoid the inconvenience of a court proceeding

Con:

- None noted

Adoption of the resolution is recommended.

## **RESOLUTION BOOK NO. 31 - 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 Councilwoman Cape and carried unanimously.

### **ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES**

#### **D. RESOLUTION NO. 07-174- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH PLANTE & MORGAN, PLLC, FOR PROFESSIONAL SERVICES FOR THE PROJECT KNOWN AS REPLACEMENT/UPGRADE OF CITY-WIDE INFORMATION SYSTEMS**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract in the amount of \$95,000 with Plante & Morgan, PLLC for professional services for the project known as replacement/upgrade of city-wide information systems.

In light of significant system inefficiencies staff requested, and Council has approved, budgetary appropriations totaling \$1.3 million for Fiscal Year 2008 to replace the current system (HTE).

Historically, the City of Asheville engages in a City-wide Information Systems effort of this scale once every 6-10 years. The elicitation of requirements for an HTE replacement will involve in-depth communication with, and engagement of, staff from every City department. Current business processes will be reviewed, documented, and analyzed. Plante & Moran, PLLC will be contracted to facilitate and conduct this process, perform the business process analysis, develop and issue the software solution RFP, and make expert recommendations regarding appropriate software solution vendors. Due to the infrequency of City-wide Information Systems replacement efforts, these tasks fall outside the range of the City staff's core competencies.

The selection efforts for this consultant included the development of a professional services needs document/RFQ; considerable circulation of this documents both locally and nationally; and a consultant evaluation process where business process and technical expertise were both evaluated.

#### **Pros:**

- Efficient use of existing resources to allow staff to continue to focus on areas of "in-house" expertise and core competency.
- Utilization of appropriate expertise to steer \$1.3M investment
- Investment in selection of appropriate long-term, strategic software solutions.
- Opportunity for refinement of existing business processes.

#### **Con:**

- Risks include the potential for consultant to lack full understanding of our particular organization with regard to business process analysis. A lack of full understanding could lead to a poor outcome. Risks can be minimized through professional project management, proactive staff outreach, and good communication strategies.

Staff recommends City Council approve a resolution authorizing the City Manager to enter into a contract in the amount of \$95,000 with Plante & Morgan, PLLC for professional services for the project known as replacement/upgrade of city-wide information systems.

Councilman Mumpower was concerned with the amount of money being invested into this project.

Councilman Newman moved for the adoption of Resolution No. 07-174. This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Councilman Mumpower voting "no."

## **RESOLUTION BOOK NO. 31 - PAGE**

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

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

**A. PUBLIC HEARING TO CONSIDER A REQUEST TO REVIEW A PROPOSED MASTER SIGN PLAN PACKAGE FOR PROJECTS IDENTIFIED AS INGLE'S MARKETS LOCATED 1865 HENDERSONVILLE ROAD AND 85 TUNNEL ROAD, RESPECTIVELY**

**ORDINANCE NO. 3536 - ORDINANCE APPROVING A PROPOSED MASTER SIGN PLAN PACKAGE FOR THE PROJECT IDENTIFIED AS INGLE'S MARKET LOCATED AT 1865 HENDERSONVILLE ROAD**

**ORDINANCE NO. 3537 - ORDINANCE APPROVING A PROPOSED MASTER SIGN PLAN PACKAGE FOR THE PROJECT IDENTIFIED AS INGLE'S MARKET LOCATED AT 85 TUNNEL ROAD**

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

Interim Planning & Development Director Shannon Tuch said that this is the consideration of a signage plan for two separate Ingles developments located at 1865 Hendersonville Road and 85 Tunnel Road respectively. This public hearing was advertised on September 14 and 21, 2007.

Earlier this year, City Council adopted an ordinance that allows larger developments an opportunity to propose a "signage plan" that would address on-site signage in a comprehensive fashion. This is the second of such applications and is substantially different in content and context than the previous submittal completed for the Biltmore Park Town Center development.

The applicant pursued several variances at the Board of Adjustment to allow the proposed signage plan for the 1865 Hendersonville Road. On July 23, 2007, the Board reviewed the requests and denied the variances (3-2) failing to find any physical hardships to support the additional sign allowances. The applicant is now pursuing an application for a signage plan to seek relief from the City's sign code standards.

The subject signage plans for the two sites are substantially similar with relatively minor differences that will be detailed below. The plans cover the signage for up to three separate structures housing up to four separate services. Separate attached signage is requested for each separate service and includes:

- Multiple signs for the principal Ingles supermarket
- Attached signage for a convenience store (The i Market)
- Attached signage for the retail gasoline sales (Gas Express)
- Attached signage for the car wash (Laser Wash)

Along with this attached signage, Ingles is also requesting consideration of two separate free-standing pylon signs to be located out along the street front for both the retail gasoline sales as well as the Ingles supermarket; both pylon signs are requesting a changeable copy panel.

Both properties are zoned Highway Business (HB) and are considered single tenant sites due, in part, to a recent subdivision that separates the automobile related services (retail gas, convenience store, car wash) component from the larger supermarket property. As separate single tenants, each tenant is permitted up to 125 square feet of attached signage that could be separated into two separate signs for a cumulative total not to exceed 125 square feet. In addition, a separate free-standing sign is permitted for a total of, again, 125 square feet with a height not to exceed 25 feet.

To better understand the signage requested at the two separate sites, as well as what would be allowed under the existing sign code the following summary has been created.

1865 Hendersonville Road (Skyland Ingles)

INGLES MARKET	PROPOSED	WHAT IS ALLOWED	AMOUNT EXCEEDED
Ingles	256.6 s.f.	1 sign @ 125 s.f. (may be split into 2 signs max.)	131.6 s.f.
American Owned	42.0 s.f.	Not allowed unless part of above	42.0 s.f.
Fresh Foods	36.6 s.f.	Not allowed unless part of above	36.6 s.f.
Starbuck's	16.0 s.f.	Not allowed unless part of	16.0 s.f.

		above	
Café	**8.0 s.f.	Not allowed unless not visible from the R.O.W.	8.0 s.f.
Video	**8.5 s.f.	Not allowed unless not visible from the R.O.W.	8.5 s.f.
Pharmacy Drive-Thru	*34.8 s.f.	Wayfinding/directional	allowed
Free-standing Pylon	178 s.f.	1 sign @ 125 s.f.	53.0 s.f.
GAS CENTER			
Gas Express, canopy	36.7 s.f.	1sign @ 125 s.f. (may be split into 2 signs max.)	# of signs have been exceeded (4 instead of 2); s.f. is within allowance
Ingles, canopy	24.0 s.f.	Not allowed unless part of above	"
The i Market	15.0 s.f.	Not allowed unless part of above	"
Wash Express	33.0 s.f.	Not allowed unless part of above	"
Laser Wash	15.0 s.f.	Not allowed unless part of above	" cumulative s.f. exceeded by 13.0 s.f.
Free-standing Pylon	144.0 s.f.	1 sign @ 125 s.f.	19.0 s.f.

The proposed plan for the grocery store exceeds the number of attached signs allowed by proposing six separate signs in lieu of the one to two normally allowed. The attached signage also exceeds the total allowed square footage (367.7 s.f. instead of 125 s.f.). In addition, the proposed free-standing sign also exceeds the total square footage allowed (178 s.f. instead of 125 s.f.).

As a separate tenant, the gas center is also permitted the same allowance as the Ingles grocery store. The proposed plan exceeds the total number of attached signs allowed by proposing five separate signs in lieu of the two normally allowed. The attached signage also exceeds the maximum square footage allowed (138 s.f. instead of 125 s.f.). The proposed free-standing sign also exceeds the total square footage allowed (144 s.f. instead of 125 s.f.).

*\* The Pharmacy Drive-Thru sign was not included in the total square footage since it is considered wayfinding or directional signage. \*\* There is also a precedent for exempting the Café & Video signs when reduced in size so as not to be visible from the public right-of-way or adjacent properties; the proposed Café and Video signs included in this sign package are two times larger than what is currently installed at the Skyland Ingles.*

85 Tunnel Rd. (Tunnel Road Ingles)

INGLES MARKET	PROPOSED	WHAT IS ALLOWED	AMOUNT EXCEEDED
Ingles	256.6 s.f.	1sign @ 125 s.f. (may be split into 2 signs max.)	131.6 s.f.
American Owned	42.0 s.f.	Not allowed unless part of above	42.0 s.f.
Fresh Foods	36.6 s.f.	Not allowed unless part of above	36.6 s.f.
Café	**8.0 s.f.	Not allowed unless not visible from the R.O.W.	8.0 s.f.
Video	**8.5 s.f.	Not allowed unless not visible from the R.O.W.	8.5 s.f.
Pharmacy Drive-Thru	*34.8 s.f.	Wayfinding/directional	allowed
Free-standing Pylon	178 s.f.	1 sign @ 125 s.f.	53.0 s.f.
GAS CENTER			
Gas Express, canopy	36.7 s.f.	1sign @ 125 s.f. (may be split into 2 signs max.)	# of signs have been exceeded (4

			instead of 2); s.f. is within allowance
Ingles, canopy	24.0 s.f.	Not allowed unless part of above	"
Gas Express, kiosk	15.0 s.f.	Not allowed unless part of above	# of signs have been exceeded (3 instead of 2); cumulative s.f. not exceeded
Free-standing Pylon	144.0 s.f.	1 sign @ 125 s.f.	19.0 s.f.

As with the previous site, both the grocery store and gas center are regarded as separate tenants and are allowed the same single tenant allowances. The three proposed signs for the grocery store exceeds the number of signs allowed (5 instead of 2) and also exceeds the total square footage (351.7 s.f. instead of 125 s.f.). The gas center exceeds the total number of signs allowed (3 instead of 2) but does not exceed the total square footage allowance. Lastly, as with the previous site, the free-standing pylon sign exceeds the total allowed (144 s.f. instead of 125 s.f.)

The stated purpose of allowing the consideration of a separate signage plan is as follows: *The purpose behind this section is to permit creativity in sign design and placement to address site issues and constraints associated with topography, pedestrian-orientation, way-finding and other conditions unique to the subject development.*

In the context of the significant number of applications for signs received daily by the City, it is difficult to recognize the creativity in the proposed signage plan where it appears to fail in addressing both pedestrian orientation and way-finding. The sites also appear to be absent of any unique conditions or constraints that would warrant special consideration. The proposed signage plan is relatively ubiquitous in design, content, and context for the average Ingles in Asheville and surrounding areas and does not appear to meet the intent of the sign code standards.

The applicant has submitted information describing a changing trend in supermarket design and function. Certainly, stores have increased in size however; their distance from the street remains relatively constant with the growth for both the buildings and the parking fields generally occurring lengthwise. Additionally, changes and advancements in building design could be used to help mitigate the effect of the increase in size without the need to fill the voids with additional signage.

Additionally, the applicant's statement describes the need for signage to support several separate "businesses" at each location. However, it is staff's position that there are only two separate businesses (gas center & supermarket) that offers a number of different good and services. The proposed markets do provide a wide variety of products (organic, traditional, ethnic foods) and services (café, delicatessen, bakery, video, etc.) however, this appears to be the trend in large grocery retailers and is well understood without excessive signage. Furthermore, the Starbucks stand located within the store cannot be regarded as a separate tenant since it is not a stand-alone Starbucks café but is rather, a hybrid franchise that is owned and operated by Ingles Markets; this is not a Starbucks café but rather an Ingles café that holds a contract to sell and advertise Starbucks coffee. Additionally, it is common knowledge that a retail gasoline center may provide other services but in addition to that common knowledge, the structures themselves are readily recognizable and reveal the services they provide without the need for signage.

Lastly, it should be noted that a certain amount of signage is allowed by right and how to make use of that signage is entirely within the applicant's discretion. The statement that our current sign code fails to address changing trends in box retail may have some merit but, should be addressed through an amendment to those sign code standards and not through a special, site specific application that does not appear to meet the stated purpose of either the existing sign code standards or the recently adopted signage plan amendment.

Pro:

- Provides clear and recognizable signage to a large grocery retailer.

Cons:

- Exceeds existing standards without creatively addressing pedestrian-orientation or wayfinding; contributes to visual clutter along the corridors.
- May set a non-conforming precedent for other stores in Asheville.

Staff recommends that the signage plan for the Ingles developments located at 1865 Hendersonville Road and 85 Tunnel Road be denied as submitted. Applicant may revise proposed signage to comply with existing standards or revise application to more creatively address recognition, ped-orientation, and/or wayfinding.

Should Council wish to consider the plan, staff requests approving some, but not all, components of the request, or condition the request to better comply with the intent of the sign code standards.

Mr. John Caputo, representing Ingles Markets, explained in detail their need for the sign package they propose. He explained the importance of the "American Owned" signage to Ingles and their dilemma with the Starbucks signage. Starbucks will pull their franchise if the signage is not placed on the building. He noted that the entire Ingles building is 348 linear feet and if that were a strip mall, each 25 linear feet could have a sign, resulting in 15 signs on that same linear footage. He felt that the City's signage guidelines haven't changed over the years because whether you have a 27,000 sq. ft. store or an 80,000 sq. ft. store, you are only allowed the same signage. He urged Council to approve their sign package as proposed.

Ingles in-house counsel explained how Starbucks is a true franchise and that they regulate every aspect of their business from management on down. In addition, he felt the definition of "multi-tenant development" in the Code is fairly broad on purpose. In addition, he noted that in addition to Starbucks, that there is another tenant in the building - the sushi bar, which is separately owned and operated.

Mayor Bellamy closed the public hearing at 6:11p.m.

City Attorney Oast felt that since these are two separate properties, he suggested a separate motion for each site.

Councilman Mumpower explained why he felt the proposed signage package is not terribly out of scale and understands why the developer is requesting a sign package commensurate with their 21st century store. Therefore, he moved to approve the signage package for Ingles Markets located on 1865 Hendersonville Road, subject to the conditions outlined by City staff. This motion was seconded by Councilwoman Cape.

At the request of Councilwoman Cape, Ms. Tuch said that she is not a sign designer, but suggested some options for creative measures in addressing pedestrian orientation with signage.

Councilwoman Cape then asked for a friendly amendment to combine the 2 freestanding pylon signs at the street to one freestanding pylon sign.

Mr. Caputo said that they already have an existing non-conforming monument sign already on the 1865 Hendersonville Road property (which they need special approval to keep). The permit issued was to re-face the existing monument sign and leave the square footage as is. The "Gas Express" sign was an additional separate sign. The rationale for a "Gas Express" sign is strictly price. He asked that if they are required to combine the two freestanding signs, that they be allowed to take down the existing 25 feet in height sign (that they were going to re-face) and increase the height by an additional 5 feet for the gas pricing.

After a short discussion, Mr. Caputo suggested a compromise of a monument sign (instead of an additional freestanding pylon sign) for the "Gas Express" sign. That would reduce the height from 23 feet to 15 feet in height, which would be much more attractive.

Councilman Mumpower and Councilwoman Cape both accepted the compromise of re-facing the one existing freestanding monument sign (leaving the height and square footage as it is now) and adding one monument sign (for "Gas Express") at 15 feet in height and 125 square feet.

In response to Councilman Mumpower, Mr. Caputo explained the importance of the copy panel on the signs.

Councilman Newman agreed that our ordinance has not kept up with the changing trends and that it should be addressed through an amendment in our sign code standards. But, since that may take some time, he would support this action.

The amended motion made by Councilman Mumpower and seconded by Councilwoman Cape to approve the signage package for Ingles Markets located on 1865 Hendersonville Road, subject to the conditions outlined by City staff, with the exception of re-facing the one existing freestanding monument sign (leaving the height and square footage as it is now) and adding one monument sign (for "Gas Express") at 15 feet in height and 125 square feet, carried unanimously.

#### **ORDINANCE BOOK NO. 24 - PAGE**

Councilman Mumpower moved to approve the signage package for Ingles Markets located at 85 Tunnel Road, subject to the conditions outlined by City staff, with the exception of re-facing the one existing freestanding monument sign (leaving the height and square footage as it is now) and adding one monument sign (for "Gas Express") at 15 feet in height and 125 square feet. This motion was seconded by Vice-Mayor Jones and carried unanimously.



Mayor Bellamy said that Ingles will be refurbishing other stores in our community and it might be helpful, in the future, to amend their plans before coming to Council if their original plans have been denied by other city bodies. She said Council wants to help Ingles be successful.

#### **ORDINANCE BOOK NO. 24 - PAGE**

Mayor Bellamy asked staff to add this proposed amendment to the other sign issue list.

At 6:45 p.m., Mayor Bellamy announced a short recess.

**B. PUBLIC HEARING TO CONSIDER REZONING PROPERTY IDENTIFIED AS MONTFORD COMMONS LOCATED ON MICHAEL STREET, JASON STREET, WOODSIDE PLACE, GUDGER STREET, HILL STREET, BAY STREET, ELIZABETH PLACE AND BARFIELD STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT, RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT, OFFICE BUSINESS DISTRICT AND OFFICE DISTRICT TO URBAN VILLAGE DISTRICT FOR REVIEW OF THE CONCEPTUAL MASTER PLAN FOR A MIXED-USE DEVELOPMENT**

**ORDINANCE NO. 3538 - ORDINANCE TO REZONE PROPERTY IDENTIFIED AS MONTFORD COMMONS LOCATED ON MICHAEL STREET, JASON STREET, WOODSIDE PLACE, GUDGER STREET, HILL STREET, BAY STREET, ELIZABETH PLACE AND BARFIELD STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT, RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT, OFFICE BUSINESS DISTRICT AND OFFICE DISTRICT TO URBAN VILLAGE DISTRICT FOR REVIEW OF THE CONCEPTUAL MASTER PLAN FOR A MIXED-USE DEVELOPMENT**

Mayor Bellamy opened the public hearing at 7:00 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to rezone property identified as Montford Commons located on Michael Street, Jason Street, Woodside Place, Gudger Street, Hill Street, Bay Street, Elizabeth Place and Barfield Street from RS-8 Residential Single-Family High Density District, RM-8 Residential Multi-Family Medium Density District, Office Business District and Office District to Urban Village District for a mixed-use development. This public hearing was advertised on September 14 and 21, 2007.

Ms. Bernstein said that contrary to other review processes where all details are presented up front, the UV rezoning is initially based upon the conceptual master plan. Many of the final details for the project including landscaping, building design, materials and pedestrian amenities will not be reviewed at this point. Each project phase will be submitted in great detail and carefully review and approved by the Technical Review Committee (TRC) as separate Level II projects. Once the conceptual master plan (covering general street network, land use configuration, development intensity and structure heights) is reviewed and approved by City Council with recommendation from Planning & Zoning Commission, the project cannot substantially deviate from this guiding plan. Any significant changes to the master plan will require returning to City Council for review and amendment.

The project as proposed includes 51 parcels that have a combined total of approximately 9.89 acres (total project area approximately 11.33 acres), located near the Historic Montford neighborhood. The project is generally bounded by the Chamber of Commerce and Randolph Learning Center School on Montford Avenue to the east, the Montford Historic district to the north, the Isaac Dickson School and Hill Street to the west, and Hill Street and 1-240 to the south. The current zoning of the project area is RS-8, RM-8, Office and Office-Business (OB). The rezoning to Urban Village provides unified zoning and a comprehensive development context that encourages mixed-use and vital pedestrian areas based on a conceptual Master Plan. A total of 6 existing structures are proposed to be demolished as a part of the UV development.

This project is currently divided into three phases with potential future phases on contiguous parcels. Overall, the development proposal includes 58,200 square feet of commercial space and both multi-family and single-family residential with some identified as senior living (10 single-family structures; 3 attached single-family – 9 units; 3 apartment structures – 120 units; 2 senior living structures – 81 units). There are 18 buildings with approximately 220 residential units, making an overall density of around 19 dwelling units per acre.

The development phases structure the proposed intensity of uses in a way that seeks to integrate with the surrounding neighborhood and existing uses. The commercial node and areas of highest density and building height are placed along Hill Street in Phases 1 & 2, where there is an existing commercial/office/business presence. Development intensity tapers off into single-family homes towards the historic Montford neighborhood and along the portion of the site that borders the Isaac Dickson School. These lower density residential nodes also incorporate large areas of public open space to create a more natural

neighborhood feel and to buffer them from the higher-density multi-family and commercial development. Ample street trees and on-street parking throughout the project will further mirror a relationship with the adjacent neighborhood.

Buildings are proposed between one and four stories, with the two four-story structures sited along Hill Street. Building heights and project densities recede as the development moves away from Hill Street. A type 'B' buffer of 30' in width will be required along the portion of the site that borders with the residential Montford neighborhood (Phase 3) and elsewhere a type 'A' buffer of 20' is required, however the applicant is seeking alternative compliance and intends to preserve some of the existing vegetation. Landscaping details will be reviewed and approved during the subsequent phases (Level II reviews). Overall, street extensions and closures are proposed in a way that enhances connectivity throughout the Urban Village and into the Montford neighborhood.

A small portion of the project area falls within the Montford Historic District Overlay. The applicant will need to coordinate with the Historic Resources Commission for review of this parcel, or may want to consider requesting from City Council that this small parcel be removed from the district. Request for removal of the parcel from the overlay would be undertaken as an action separate from this rezoning and master plan approval.

The proposed UV rezoning promotes development similar to what the existing zoning in this area allows. RS-8 intends to provide higher density single-family development in areas with sufficient infrastructure and to maintain and protect residential character. Phase 3 of this rezoning project is located in this area and shares goals of the underlying district, with the SF homes proposed here. There is actually a lower residential density proposed in this phase than what would be allowed in RS-8 (5.8 units per acre). Phase 2 is located where the site is currently zoned RM-8, which provides for multi-family development. Although the proposed residential density is much higher (33.8 units per acre) this phase has a mix of SF attached and detached as well as MF structures, senior living and substantial open space. Office and Office Business, which are intended to serve as transition zones for the development of smaller scale office and retail uses adjacent to residential areas, are located in the Phase 1 area. In the proposed rezoning plan, the commercial uses are placed here adjacent to the existing office/commercial uses which will remain at this point.

Overall, the uses, building types and structure sizes proposed for this UV project are not unlike that allowed in the existing zoning and are placed similarly throughout the approximately 11.33 acre site. The benefit to rezoning and adoption of the master plan is to provide a comprehensive approach to neighborhood development, moving forward with a cohesive sense of community.

The applicants held a 3-day charette process (May 29-31, 2007) in the community to gather input towards the overall design and uses included in the Urban Village. They have also met on several occasions with the Montford Neighborhood Association and the Coalition of Asheville Neighborhoods and other local groups in order to facilitate open communication with the community throughout this process.

At their August 6, 2007, meeting, the TRC approved this project with the conditions listed in the staff report. A number of Asheville residents were present to relay their support of this project.

The Planning & Zoning Commission heard this request at their September 5, 2007, meeting and approved the rezoning and master plan by a 7-0 vote. However, they recommended the removal of one parcel (9649.17-10-1763) from the UV rezoning due to the fact that it is not contiguous to any other UV-zoned parcels. The applicant was amenable to this request and that parcel (also identified as parcel #51 on the submitted plans) has been removed from the request for rezoning. There were approximately 20-25 residents present at the meeting to convey their support towards the project, especially due to the senior living component, the variety of housing options, the infill nature of the project within such close proximity to downtown, the walkability of the site within the context of surrounding areas and general support for the Urban Village concept and how interactive the developer has been in terms of gathering community input. Communication was received from a number of neighbors with general concerns about how their property will be affected throughout the lengthy phased construction process and several adjacent landowners expressed their desires to be included in the Urban Village in a future phase. Staff explained that there is an opportunity to amend the master plan and rezoning request at a later date should additional parcels be included by the applicant, however the purchase and sale agreements between the developer and the individual property owners are to occur outside of any staff involvement. Staff also explained that should those properties remain zoned Office, the uses allowed are similar to office/commercial/residential uses permitted in UV, so they can still develop their properties in way that is similar to what will be developed around them. No negative communication directly related to the rezoning or conceptual master plan has been received.

The conceptual Master Plan submitted follows the requirements of the Urban Village district by indicating an acceptable general street network and land use configuration for this scale of development, as well as suitable open space, building heights, setbacks and building types.

## **Pros**

Provides a variety of uses and building types similar to a more traditional community, and is designed in a way to integrate into existing neighborhood.

- Infill projects locate development in an area where infrastructure already exists, resulting in more efficient use of land.
- Presents a walkable community (also walkable to downtown) with services that will benefit and/or complement existing adjacent uses.
- Project is suitable to support transit (over 8-16 dwelling units per acre) and is located on an existing transit route.

### Cons

- Proposed rezoning is not inclusive of all properties in the area – pockets of parcels containing existing homes and businesses are not included and may have a slight piecemeal effect in areas.

Staff recommends approval of the rezoning request and adoption of the conceptual Master Plan for this Urban Village development.

Mr. George Gabler, representing Frontier Partners, LLC, spoke in support of this rezoning in that they have gone to great lengths to communicate with everyone who has a stake in this project. As a result of that conversation, the original plan (which included for a hotel as a centerpiece), has been amended to the plan before Council now.

Mr. Doug Brock, representing adjoining property owners along Hill Street who are encircled by the project, explained why they requested Council to (1) approve Phase I so the developer can start with this worthy project; and (2) require what is currently called Phase II be resubmitted with consistent rezoning and a resolution of all traffic concerns and for all of these modifications be acceptable to the remaining property owners, the city, and the developer and his assigns.

Rev. Christopher Chiaromonte felt that even though this looks like a good development, however, it will raise property taxes for area residents.

Mr. Rob Close, former resident of the neighborhood, felt he was pressured to sell because of the threat of prolonged construction next to his home.

The following individuals spoke in support of the property being rezoned for this project:

Mr. Danny Sellers, property owner on Broadway  
Mr. John Maultry, community member and Past President of CREIA  
Mr. Bill Bailey, East Asheville resident  
Mr. Kevin Kerr, adjoining property owner  
A resident on Sweetbriar Court  
Mr. Robert Howard, resident on South Oak Circle  
Mr. Richard Tomialowicz, South Asheville resident

At 7:33 p.m., Mayor Bellamy closed the public hearing.

Councilman Newman moved for the adoption of Ordinance No. 3538 to rezone property identified as Montford Commons located on Michael Street, Jason Street, Woodside Place, Gudger Street, Hill Street, Bay Street, Elizabeth Place and Barfield Street from RS-8 Residential Single-Family High Density District, RM-8 Residential Multi-Family Medium Density District, Office Business District and Office District to Urban Village District, adopting the proposed Master Plan, subject to the conditions recommended by City staff and subject to (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 Councilman Freeborn.

In response to Councilman Mumpower, Ms. Bernstein reiterated that should the adjoining properties remain zoned Office, the uses allowed are similar to office/commercial/residential uses permitted in UV, so they can still develop their properties in way that is similar to what will be developed around them.

When Councilman Mumpower asked about traffic and construction vehicles on Bay and Jason Streets, City Traffic Engineer Ken Putnam said that the plan is conceptual in nature. The City takes a hard look at construction phases of any and all projects.

He said that any of the internal streets that come forward have to meet the City's current standards. If they are narrow now, they will have to meet the width standards, etc. and they will watch that very closely. He felt that between the staff and the developer, we can take the concerns raised by the public and make sure they are addressed.

At the request of Vice-Mayor Jones, Councilman Newman accepted the friendly amendment to include the neighborhood's objective concerns regarding staging of construction, with the measure being that the neighborhood is included in the conversation (not necessarily inclusion for a determined outcome) and that their concerns are constructively addressed.

In response to Vice-Mayor Jones about rezoning the adjoining properties, Ms. Bernstein said that Council can initiate the rezoning of those properties, but the Urban Village is directly linked to this Master Plan. City Attorney Oast said that there are a number of different classifications that would be compatible with the Urban Village District, but there are some logistical issues that would affect our ability to move ahead or make recommendations.

Vice-Mayor Jones suggested staff initiate a study of the area and to come back to Council with a recommendation on the appropriate zoning for that area. Ms. Bernstein said that there are many options available, but the property owners need to come up with what they want to see in that area as a whole.

In response to Councilwoman Cape, Ms. Bernstein explained that there is no physical development proposed in the Phase II site now, so the actual physical development involved in Phase II is just one building. They do, however, want to see roadway enhancement surrounding the entire area.

In response to Vice-Mayor Jones, Interim Planning & Development Director Shannon Tuch said that the Urban Village process is a form of conditional zoning. We do have some other urban districts (Urban Place, Urban Residential, Neighborhood Corridor, etc.) that could be applied to those properties if Mr. Brock and the other property owners wanted to come together and pursue their own rezoning application. They could pursue a straight rezoning and not even have to go with a conditional zoning at that time.

In response to Mayor Bellamy, City Attorney Oast said that at some later date if the applicants and the adjacent property owners come to some agreement as to an overall master plan, then they can come back to Council in order to get their properties rezoned and have the master plan amended to be included as part of this overall master plan.

In response to Vice-Mayor Jones, Ms. Tuch said that in this context, the two most compatible districts are Urban Place and Urban Residential. There are two options. One option is that a later date, this master plan can be amended to include those properties and the rezoning could also be applied at that time for Urban Village. The other option is the separate property owners could pursue their own separate application and not be a part of this master plan. They could pursue a straight rezoning or come back with a conditional zoning.

In response to Councilman Newman, City Traffic Engineer Ken Putnam explained different options to improve the intersection between Hill Street and Montford Avenue.

The amended motion made by Councilman Newman and seconded by Councilman Freeborn carried unanimously.

## **ORDINANCE BOOK NO. 24 - PAGE**

### **V. UNFINISHED BUSINESS:**

#### **A. RESOLUTION NO. 07-177 - RESOLUTION AUTHORIZING THE ASHEVILLE REGIONAL AIRPORT AUTHORITY TO PROVIDE A LEASE TERM TO ENCORE FBO ACQUISITIONS, LLC, THAT EXTENDS BEYOND THE TERM OUTLINED IN THE CITY OF ASHEVILLE AND ASHEVILLE REGIONAL AIRPORT AUTHORITY LEASE AGREEMENT**

Mayor Bellamy said that this matter was continued from the August 28, 2007, meeting.

Chief Financial Officer Ben Durant said that at the City Council meeting on August 28, 2007, staff recommended that City Council approve a request from the Asheville Regional Airport Authority's to enter into a 30 year base lease, with an optional 10 years, with Encore Fixed Base Operator (FBO). Council continued this agenda item until September 25, 2007, requesting additional information from the Authority about the proposed lease. The Authority has provided the following documents for your review:

- A copy of the letter from the Federal Aviation Administration (FAA) indicating that the Authority is not in violation of

any federal regulations and/or grant assurances based on the lease negotiated with Encore.

- Information regarding lease terms for similar type projects.
- A copy of the original letter sent to the FAA concerning the Encore lease and Million Air's allegations.

He also contacted CFO's in peer cities with airports to help assess the financial viability of the proposed Encore lease. He shared with Council the findings, noting that a 30-year lease is pretty conventional.

Ms. Patsy Brison, attorney representing Asheville Jet Inc., d/b/a Million Air, presented City Council with a letter dated September 25, 2007, outlining her comments. In summary, (1) they maintain that the proposed lease with Encore includes terms that are unfair and discriminatory in violation of federal grant assurances; and (2) they have concerns that City Council is not following a required State law in leasing property owned by the City of Asheville at the Airport beyond the lease term of the Airport Authority. She said that Million Air remains willing to and interested in re-negotiating its lease with the Airport Authority. They request that City Council deny the request of the Airport Authority to enter into a lease with Encore beyond the lease term between the City of Asheville and the Airport Authority or send the matter back to the Airport Authority to more carefully consider the matter.

Mr. David Edwards, Airport Director for the Asheville Regional Airport, responded to statements made and noted that this is a 30 year base lease for \$3.5 Million investment initially. In order to get an additional 10 years and an option, they would have to invest another \$4.5 Million on top of the \$3.5 Million.

Mr. Victor Buchanan, attorney for the Asheville Regional Airport Authority, said that the Airport Authority was created in 1979 via an agreement between the County of Buncombe and the City of Asheville. At that time (and reaffirmed through agreements), the operation of the Airport was exclusively invested in the Airport Authority and part of that responsibility given, without reservation, was the seeking of business opportunities to the Airport. There was no veto power reserved by either the County or the City relative to those agreements. The only issue before the Council at this time is whether or not Council approves a term that goes beyond 2018.

Vice-Mayor Jones moved for the adoption of Resolution No. 07-177. This motion was seconded by Councilman Freeborn.

Mr. Edwards responded to Councilman Mumpower's questions, however, Councilman Mumpower still felt that this is such a complicated issue, he did not feel comfortable in proceeding without giving the City Attorney the opportunity to review the legalities of the claims and counter-claims presented.

In response to Councilman Mumpower, Mr. Edwards said that the lease agreement between the City and the Airport Authority expires in 2018, but there is a 25-year option that the Airport Authority has, at its discretion to exercise, if the Authority is kept in place past 2018. However, the joint agency agreement that created the Authority expires in 2018.

After a brief discussion, and in response to Councilman Mumpower, Mr. Edwards said that an aviation operation can pay ad valorem taxes or make a payment in lieu of taxes.

Mayor Bellamy asked that Mr. Edwards to formally ask Million Air if they would like to renegotiate their lease and that he advise Council when that has been done, which can be as simple as a copy of the letter sent to Million Air.

If the motion fails, Councilman Mumpower asked City Attorney Oast if he had enough guidance to address the questions that are open-ended. City Attorney Oast replied that he did.

The motion made by Vice-Mayor Jones and seconded by Councilman Freeborn carried on a 5-1 vote, with Councilman Mumpower voting "no."

## **RESOLUTION BOOK NO. 31 - PAGE**

### **VI. NEW BUSINESS:**

### **VII. OTHER BUSINESS:**

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

#### **Police Citizens Review Board**

Mr. Robert Close, Mr. David Ireland, Ms. Adrian Peterson and Ms. Rita Logan, representing the Citizens Awareness Coalition, explained the need for the City to implement a citizens review board of the Asheville Police Department, noting that the existing Citizens-Police Advisory Committee is not enough.

After discussion, Councilman Mumpower, Chair of the City Council Public Safety Committee, said that he would place this item on an upcoming agenda, inviting the public and the Citizens-Police Advisory Committee to attend and participate in the discussion. Because the regular meeting time is at 7:00 a.m. (set so people could attend before work) he would be amenable to changing that time in order to accommodate other schedules, if so asked.

In summary, Mayor Bellamy stressed the importance of communication and said that it is the majority of the Council's consensus to instruct the City Manager to (1) obtain information on best practices of what other cities have done to try to establish a relationship with the community by these police oversight boards; (2) provide information on the process of an SBI investigation; (3) explain how information is reported back to the community after an incident; (4) be clear on how, if the community has an issue with a police officer, does a citizen best address that; and (5) what is the State Bureau of Investigation's role and the District Attorney's role in determining cases and how they proceed. She said that we currently have the tool of a Citizens-Police Advisory Committee and one of their duties is to communicate with the community and to be our liaison between the police and the community. If that is not effectively happening, then we need to look at what is happening with that communication breakdown. She asked that the report be brought back to Council in 45-60 days.

### **Other Issues**

Mr. Gene Hampton, founder of Asheville-Buncombe and North Carolina Citizens Government, spoke to Council about the lack of quality management and the need to restore trust and confidence in the community.

Rev. Christopher Chiaromonte spoke about the need of true affordable housing in Asheville.

### **Greenlife Grocery**

Mr. Reid Thompson, resident on Maxwell Street, asked Council not to blame him for Greenlife violating the Unified Development Ordinance (UDO) and the City government not enforcing the UDO. The City Council has the power, duty and responsibility to resolve the issues of Greenlife on Maxwell Street and until that happens he will continue to ask Council to make Greenlife meet the requirements of the UDO and will continue to exercise all options afforded to him by the State Constitution to make this happen.

After a short discussion, Mayor Bellamy said that Greenlife is in the process of submitting plans to resolve many of the long-standing concerns and instructed the City Manager to give Council a written update on the no parking signs on Maxwell Street and the enforcement efforts.

### **IX. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 9:02 p.m.

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CITY CLERK

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MAYOR