

Regular Meeting

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

Absent: None

PLEDGE OF ALLEGIANCE

Mr. Cameron Barnett, from Boy Scout Troop 77, led City Council in the Pledge of Allegiance.

INVOCATION

Father Jim Abbott from St. Matthias Episcopal Church gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 8, 2008

B. RESOLUTION NO. 08-08 - RESOLUTION APPROVING A CO-SPONSORED EVENT FOR JANUARY, 2008

Summary: The consideration of a resolution approving a co-sponsored event for January, 2008.

Due to the early date of the Martin Luther King, Jr. Peace March, City Council's review of a partial list is required prior to consideration of the entire list of co-sponsored special events for 2008. The Parks and Recreation Department uses a matrix to assist in determining the minimum requirements for an event to be considered for co-sponsorship. This matrix includes specific points given for such areas as economic development, out of town spending, whether the event is designed for raising funds for local charities, or whether the event increases cultural awareness and understanding. A total of 23 events were approved in 2007.

The remaining events recommended for co-sponsorship in 2008 will be submitted under a separate staff report. In the future, the Department will adjust the co-sponsorship application deadline to earlier in the year prior as an effort toward the production of a single, all inclusive staff report to City Council.

Pros:

- Generates revenue for the local economy
- Provides additional quality cultural programming and diversity
- Allows fundraising opportunities for charities
- Expands and enhances special event programming in Asheville

Cons:

- The City's financial contribution is approximately \$720 in in-kind resources and fee waivers
- Events contribute to the wear and tear of infrastructure and equipment provided to the organizers

The Asheville Parks and Recreation Department recommends City Council approve a resolution for a co-sponsored event in January, 2008.

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C. RESOLUTION NO. 08-09 - RESOLUTION RATIFYING THE CITY MANAGER ENTERING INTO A CONTRACT WITH MOTOROLA INC. FOR MAINTENANCE SERVICES FOR THE CITY OF ASHEVILLE'S 800 MHZ RADIO INFRASTRUCTURE

Summary: The consideration of a resolution ratifying the City Manager entering into a contract with Motorola, Inc for maintenance services for the City of Asheville's 800 MHz radio infrastructure.

During the Fiscal Year 2008 budget process, budgetary dollars were appropriated for recurring maintenance of this equipment, with an anniversary date of December 1, 2007. Staff routed a contract through the City contract process, starting in October of 2007. Due to timing on the routing of the contract and Council's limited December agenda, it was necessary to process this contract without prior Council approval. For this reason, Council ratification of this action is being sought at this time.

Pros:

- Proactive maintenance of 800Mhz infrastructure equipment
- Repair and support if necessary due to 800Mhz infrastructure component failure
- Lower response time for support due to contractual nature of agreement, enhancing officer safety

Con:

- None noted.

Staff recommends City Council approve a resolution ratifying the City Manager entering into a contract with Motorola, Inc for maintenance services for the City of Asheville's 800 MHz radio infrastructure.

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D. RESOLUTION NO. 08-10- RESOLUTION DECLARING THE INTENT OF THE CITY TO REIMBURSE ITSELF FOR CAPITAL EXPENDITURES INCURRED IN CONNECTION WITH THE ACQUISITION OF VEHICLES AND EQUIPMENT FROM THE PROCEEDS OF LEASE-PURCHASE CONTRACT TO BE EXECUTED AND DELIVERED IN THE CALENDAR YEAR 2008

Summary: The consideration of a resolution declaring the intent of the City to reimburse itself for capital expenditures incurred in connection with the acquisition of vehicles and equipment from the proceeds of lease-purchase contract to be executed and delivered in the calendar year 2008.

The current capital improvement program (CIP) includes funds previously appropriated by City Council to finance the acquisition of fire trucks, other large vehicles and public safety radios and equipment at an approximate cost not to exceed \$6.0 million. The vehicles and equipment were budgeted to be funded with proceeds from a lease-purchase financing contract.

Based on varying delivery dates, the City will receive some of the vehicles and equipment prior to the actual execution of the lease-purchase financing contract. As such, expenditures for these vehicles and equipment will initially be paid for with general fund cash. The resolution allows the City to reimburse itself for initial vehicle and equipment expenditures incurred and paid 60 days prior to the adoption of this resolution.

With approval of this resolution, the City intends to reimburse its initial vehicle expenditures from a portion of the proceeds to be received from a fully executed lease-purchase contract.

Staff recommends City Council approve a resolution declaring the intent of the City to reimburse itself for capital expenditures incurred in connection with the acquisition of vehicles and equipment from the proceeds of lease-purchase contract to be executed and delivered in the calendar year 2008.

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E. RESOLUTION NO. 08-11- RESOLUTION ACCEPTING BUCK SHOALS ROAD, WALDEN DRIVE, QUAIL HOLLOW DRIVE, CRESENT STREET, OAK STREET, PINE STREET, ORCHARD STREET, MORSE DRIVE, AND EAGLES NEST LANE AS CITY-MAINTAINED STREETS

The consideration of a resolution accepting Buck Shoals Road, Walden Drive, Quail Hollow Drive, Crescent Street, Oak Street, Pine Street, Orchard Street, Morse Drive, and Eagles Nest Lane as city-maintained streets.

This is a request for street acceptance of various existing state-maintained streets as city-maintained streets from recently annexed areas of the City of Asheville. Typically, state-maintained streets that are entirely within the city and are classified as local type streets make good candidates to become city-maintained streets. Local type streets primarily provide access to property and many of these streets are found in residential communities.

Ordinance # 7-15-1(e)(4)a requires that streets dedicated for public use by accepted by resolution of the City Council. The recently annexed areas include the Sardis Road area, the Enka Park area, the Hendersonville Road area, and the Sweeten Creek

Road area.

SR 3541 (Buck Shoals Road) from SR 3522 (Old Shoals Road) to US 25 (Hendersonville Road) is a state-maintained street that has an average width of 20 feet, a length of 0.26 mile, and a right-of-way width of 50 feet.

SR 3628 (Walden Drive) from SR 3541 (Buck Shoals Road) to SR 3495 (Glenn Bridge Road) is a state-maintained street that has an average width of 20 feet, a length of 0.37 mile, and a right-of-way width of 50 feet.

SR 3316 (Quail Hollow Drive) from SR 3541 (Buck Shoals Road) to its dead-end is a state-maintained street that has an average width of 18 feet, a length of 0.10 mile, and a right-of-way width of 50 feet.

SR 3435 (Crescent Street) from NC 112 (Sand Hill Road) to SR 3436 (Pine Street)/SR 3535 (Oak Street) is a state-maintained street that has an average width of 20 feet, a length of 0.11 mile, and a right-of-way width of 50 feet.

SR 3535 (Oak Street) from SR 3435 (Crescent Street) to SR 3534 (Orchard Street)/SR 3436 (Pine Street) is a state-maintained street that has an average width of 20 feet, a length of 0.13 mile, and a right-of-way width of 50 feet.

SR 3436 (Pine Street) from SR 3435 (Crescent Street) to SR 3534 (Orchard Street)/SR 3535 (Oak Street) is a state-maintained street that has an average width of 20 feet, a length of 0.15 mile, and a right-of-way width of 50 feet.

SR 3534 (Orchard Street) from NC 112 (Sand Hill Road) to SR 3436 (Pine Street)/SR 3535 (Oak Street) is a state-maintained street that has an average width of 20 feet, a length of 0.25 mile, and a right-of-way width of 50 feet.

SR 3555 (Morse Drive) from SR 1224 (West Oak View Road) to its dead-end is a state-maintained street that has an average width of 18 feet, a length of 0.50 mile, and a right-of-way width of 60 feet.

SR 3643 (Eagles Nest Lane) from SR 1224 (West Oak View Road) to its dead-end is a state-maintained street that has an average width of 24 feet, a length of 0.23 mile, and a right-of-way width of 50 feet.

Transportation and Engineering Department staff and Public Works Department staff have inspected these streets and recommend their change of ownership from state-maintained streets to city-maintained streets.

Following City Council's approval of this resolution and approval by the North Carolina Department of Transportation (NCDOT), the subject streets will be added to the official Powell Bill List.

Pros:

- The City of Asheville will receive Powell Bill Funds from the NCDOT to maintain the streets.
- The streets provide access and connectivity in residential communities.

Con:

- Powell Bill Funds will probably not cover 100% of the total cost to maintain the streets.

Staff recommends that City Council approve a resolution accepting Buck Shoals Road, Walden Drive, Quail Hollow Drive, Crescent Street, Oak Street, Pine Street, Orchard Street, Morse Drive, and Eagles Nest Lane as city-maintained streets.

When Mayor Bellamy asked if we could do something similar for water lines that are constructed by developers, City Manager Jackson said that he would investigate that and report back to Council.

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

III. PRESENTATIONS & REPORTS:

A. CITIZEN POLICE OVERSIGHT REPORT

Police Chief Bill Hogan said that during the past several City Council Public Safety Committee meetings, there has been discussion concerning the interest of some residents to have a Citizens Police Review Board with oversight of the Asheville Police Department (APD). He has been asked to provide you with information on the current process for Internal Affairs and others avenues that are in place to ensure the accountability of Asheville Police Department employees.

Internal Investigations: It is the APD's policy to investigate all reports of employee misconduct, including anonymous complaints. The Office of Professional Standards is responsible for coordinating such investigations. Complaints can be made to the on-duty supervisor 24 hours a day to the Office of Professional Standards during weekday business hours, or via the City's website, where a complaint form is downloadable.

Most complaints investigations will be completed within 30 days, but in some cases it may require more time to locate witnesses or to collect information. If an investigation will take longer than 30 days, the complainant will be notified of the expected date of completion.

When a complaint is received, the Office of Professional Standards sends a letter to confirm the complaint has been received and assigned for investigation. Citizens who file a complaint will receive a follow-up letter at the completion of the investigation.

However, in accordance with state law, the APD cannot release what specific discipline, if any, was imposed on the employee.

- **Police Shootings:** Officers in North Carolina are allowed to use deadly force when they feel their lives or the lives of others are in danger. In the case of any officer involved shooting, we immediately request that the State Bureau of Investigation (SBI) conduct an independent investigation of the incident and then presents its final report to the district attorney, who decides whether or not to file criminal charges. The SBI investigation can take up to six months.

- **Claims of Violations of Constitutional Rights:** When a private citizen believes his or her constitutional rights have been violated by a police officer, the citizen has the following resources:

Municipal

1. File a complaint with the APD's Professional Standards Division (Internal Affairs).
2. File a civil claim for money damages with the City's Risk Management Division.

State

1. File complaint with the N.C. Attorney General.
2. Contact a civil attorney and file a lawsuit in state court.

Federal

1. File a complaint with the federal government (<http://www.usccr.gov/filing/flndx.htm>) U.S. Department of Justice or the local office of the Federal Bureau of Investigation (FBI)
2. Contact a civil attorney and file a 42 U.S. 1983 lawsuit in federal court.

State Law Concerning the Release of Personnel Information: One of the frustrations that he hears from citizens is they want public access to all the information contained in a disciplinary case. State law clearly prohibits the City from releasing this information.

Pursuant to N.C. Gen. Stat. § 160A-168, personnel records are not considered public record.

It is a class three misdemeanor for any public official who willfully permits any person to have access to a personnel file except as permitted by the statute.

Therefore, it is a class three misdemeanor for any employee of the City of Asheville to release the contents of any internal affairs investigation of a police officer. The only way a person can gain access to an Internal Affairs investigation is to get a court order issued by a Superior Court Judge.

In addition, any information regarding the criminal investigation of a city employee (whether performed by APD or the SBI), is considered a criminal investigative record. Pursuant to N.C. Gen. Stat. § 132-1.4, criminal investigative records are not public records and shall not be released to the general public without a court order from a Superior Court Judge.

Pursuant to N.C. Gen. Stat. § 160A-168(b), the following information is considered public information and will be released

upon a written request to the City's Human Resources Department:

1. Name;
2. Age;
3. Date of original employment or appointment to the service;
4. The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the city has the written contract or a record of the oral contract in its possession;
5. Current position title;
6. Current salary;
7. Date and amount of the most recent increase or decrease in salary;
8. Date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification; and the office to which the employee is currently assigned.

- **State Law Establishing the City of Asheville Civil Service:** Another factor that complicates disciplinary matters is the fact that the City of Asheville is one of a handful of cities in North Carolina that has a state statute that establishes a Civil Service Commission to provide extra protection for employees to prevent arbitrary acts of discipline. The Asheville Civil Service Act (1999-303) creates the Asheville Civil Service Commission which has five members (2 appointed by the City Council, 2 member elected by the employees of the city and one member appointed by the other four).

The Civil Service Board hears appeals by employees regarding specific disciplinary actions issued by the City. These hearings are closed to the general public based on the disclosure of personnel information as set forth in N.C.G.S. §160A-168. These hearings are closed unless the employee consents to the hearing being open to the public.

- **Municipalities with Citizen Review Boards:** Some North Carolina municipalities have a citizen review process of police discipline. Those cities are Charlotte, Winston-Salem, Durham and Greensboro. Review boards in these cities make non-binding recommendations to the city manager, who makes the final decision regarding the application of any discipline.

In each of these cities, the General Assembly passed a local law allowing for the disclosure of disposition of the complaint and facts relieved upon to the committee and to the aggrieved party or his or her survivor. *However, board members are required to treat this information as confidential and are prohibited from releasing it to the general public.* Therefore, even if there were a citizen review board of the Asheville Police Department, meetings regarding officer conduct would not be public and the board members would be prohibited from releasing personnel information (except as permitted by statute) to the general public.

- **Other statutes:** Pursuant to N.C. Gen. Stat. § 147-90 – The district attorney, upon the request of a surviving spouse or next of kin, may within 180 days of the death request the SBI to conduct and investigation into the incident. *The document is not a public record pursuant to 132-1.*

- **Recommendation:** Past national research has reported that the level of citizen satisfaction with an Internal Review process or a Citizen Review process is determined by the outcome of the case. If the case finds in favor of the complainant, then there is satisfaction with the case; conversely, if the complaint is not substantiated by an internal investigation or a citizen review panel, then the complainant is not satisfied with the outcome.

It is much like a court proceeding: if the suspect is not found guilty then the victim and the victim's family generally are not happy with the outcome. This speaks to the challenge we face in our efforts to preserve justice and to ensure fairness for all concerned parties.

It was the recommendation of the City Council Public Safety Committee to recognize the existing, multiple avenues available to citizens to address incidents of police misconduct and to ensure accountability. This Committee did not recommend a Citizens Police Review Board at this time. Additionally, the Public Safety Committee stated that the City Council, as the elected officials directly accountable to the citizens of Asheville, works closely with the City Manager to ensure that City services are delivered professionally and fairly in an efficient and effective manner.

Councilman Mumpower said that it was the Public Safety Committee's feeling that it was not in the best interest of the City or our police officers to do anything that would further politicize the activities of the Police Department as seen from research of experiences in other cities that have committees of this nature. The Committee felt it was redundant to the extent that no committee that we establish can freely release personnel information which is a weak link in the system. But, that is state law not local law and it's one of the things that leaves the community with the impression that the Police Department is covering things up. We can, however, do a better job of communicating with people that that's the reality. There was also a suggestion that we look for ways to strengthen the existing Citizens/Police Advisory Committee, which is struggling for a role, i.e., educating the community, raising awareness, addressing concerns, etc. The Public Safety Committee also wondered if it would be possible to strengthen two

things in the Police Department (1) communication; and (2) the complaint procedure to make it more user-friendly.

Vice-Mayor Davis said that the Public Safety Committee is concerned about the public perception and about the amount of violence that goes on in our community. The Police Department is very proactive in enlisting help from the SBI and FBI, if necessary. We have quite a bit of accountability. We want the community to realize that this is a process that is taken seriously. We will be initiating an electronic program on our website that will let people know where crime occurs and that kind of openness goes beyond what we see in a lot of other communities. We do want to give the Citizens/Police Advisory Committee a different scope - not an oversight committee, but a committee that interfaces with the Police Department and the public.

In response to Councilwoman Cape, Police Chief Hogan explained the complaint procedure, noting that the person can access the information off the City's website and does not have to physically come into the Police Department. He also noted that even though we do not allow advocacy groups to take the complaint (the aggrieved person must file the complaint with the Police Department, but the advocacy group can assist the person), the Department has no objectives to working with the advocacy group.

In response to Councilman Newman, Vice-Mayor Davis said that the City Council Boards/Commissions Committee has asked City Clerk Lipe to provide them with a copy of the ordinance establishing the Citizens/Police Advisory Committee so they can see the scope of work that was envisioned. It is their hope to broaden the scope of the Committee, not that it become an oversight committee.

Councilman Mumpower used the Civic Center Commission as an example of the type of work that could be performed by the Committee. He envisioned the Committee reviewing certain policy matters to reflect community insight, for example the Committee could be directed to work with the Police Chief and community to come up with a user-friendly complaint procedure. Even though it is an advisory committee, it can serve a real function.

When Councilman Newman questioned if there was any research on whether the presence or absence of a police oversight committee tends to have any influence on the public perception of law enforcement in the community, Police Chief Hogan said he would have to research that particular issue.

In response to Councilman Newman, Police Chief Hogan said that he believed the way the committees work in other cities is that after the police department meets with the complainant (or family member) and shares with them the basic information and results of the internal investigation, if they are not satisfied, they have the right to appeal to the Citizens Police Review Board.

Councilwoman Jones suggested Chief Hogan not only research on whether a Citizens Police Review Board does improve the overall trust in the perception of law enforcement in the community but balancing that with whether it impacts the police feeling they have citizen appreciation or it results in reduced police moral.

Mayor Bellamy suggested the Citizens/Police Advisory Committee could give feedback on crime statistics, looking at where crimes are taking place in our City and how neighborhood residents can work with the Police. The Committee could work to improve the community policing efforts. The City also has a Citizens Police Academy which gives the citizens the opportunity to get inside the Police Department to see the internal operations. The Committee could be utilized to take advantage of that process by letting the community know of what the Citizens Police Academy can offer. She suggested the Committee could be directed to track complaints, i.e., the number of complaints and the type of complaints. Another suggestion would be for the Committee to work with the Police Chief to research what kind of classes might be beneficial for our officers. The Committee needs to become ambassadors between the Police Department and the community. That way the Committee is being utilized as well as the community being kept informed.

Police Chief Hogan noted that the next Police Academy begins March 13, 2008, and urged citizens to apply so they can see the heart of the Police Department and the police officers level of commitment.

Mr. Reid Todd questioned how minor complaints are reviewed.

Mr. Fred English felt that a Citizens Police Review Board was not necessary in that the Police Department. That job rests with the Police Chief, City Manager and City Council.

Councilman Mumpower moved (1) that further efforts be made by the Police Department to strengthen the citizen complaint procedure and process and that collaboration be conducted in with the Public Safety Committee; (2) to ask the Public Safety Committee to make efforts with the Police Department to seeks ways to evaluate and strengthen the utility of the Citizens/Police Advisory Committee (using suggestions outlined by Mayor Bellamy above); (3) there be additional efforts to strengthen police community from the City and the police on high visibility police matters within the limits of North Carolina law and that would include continuing education explanation of what the limits the Police Department operates under; (4) that the Public Safety Committee

make an active effort to meet with those organized groups who have an interest in establishing a Citizen Police Review Board and seek more input about what their concerns are to see how we might work with them to that effect. This motion was seconded by Vice-Mayor Davis.

Vice-Mayor Davis suggested we publish information on the City's website under the Police Department the meeting dates and times of the Public Safety Committee. Even though it is not the recommendation at this time to establish a Citizens Police Review Board, community input is important.

Councilman Newman felt that we are closing the door on the creation of a Citizens Police Review Board. He's not sure if that's in the community's or the Police Department's best interest or not. He would like to hear the pros and cons on both sides of the issue. He was in favor of broadening the scope of work of the Citizens/Police Advisory Committee, but was not comfortable in closing the door.

Councilwoman Cape didn't think that the people who support a Citizens Police Review Board were notified that this item was going to be discussed by Council at this meeting. Even though the Public Safety Committee is not recommending a Citizens Police Review Board, at this time, she would be interested in further discussion with the community on why they feel the Board is necessary. All points on the motion are good; however, she did not want to close the door entirely on a Citizens Police Review Board.

Upon inquiry of Councilman Newman, Vice-Mayor Davis said this issue was discussed in depth at the Public Safety Committee. Out of that Committee, there was a unanimous feeling that this was closure. However, nothing is closed forever. He felt we have left the door open to re-establish the Citizens/Police Advisory Committee and to look for ways to strengthen public comment. We would be open, as a Committee, to have public comment on this subject. This question has been out there for a long time and the position of the Public Safety Committee and the Police Department is that a Citizens Police Review Board not be established.

Mayor Bellamy said it's clear that regardless of what information Council needs, regardless of a Citizens Police Review Board or a Citizens/Police Advisory Committee, the state statutes prohibit personnel information or actions of any Police Department employee be given out, unless the City is given special procedures to make that happen. Even if the Public Safety Committee meets with the individuals who are requesting the Citizen Police Review Board, we don't have the authority to give out personnel information. It would be good to hear the concerns (other than personnel) from those requesting the Board because we may be able to incorporate solutions into the existing structure. She said that anything on City Council's agenda can be revisited, unless it is a conditional use permit, so if a Council Member has other information that they would like Council to review, it can be brought back. At this time we want to re-tool the Citizens/Police Advisory Committee to have true responsibilities that will impact the community in a positive way and assist the Police Department. We are also asking the Police Chief to put more efforts into communication by providing additional information to the community.

Ms. Adrian Peterson hoped that the Citizen Police Review Board will be revisited.

Councilman Mumpower asked for a friendly amendment to his motion. The amendment would be to add "(5) the Citizens/Police Advisory Committee come back to City Council sometime in a 6-month parameter and give Council a report on their follow-up actions or any additional recommendations that they have". This friendly amendment was accepted by Vice-Mayor Davis.

The amended motion made by Councilman Mumpower and seconded by Vice-Mayor Davis carried on a 5-2 vote, with Councilwoman Cape and Councilman Newman voting "no."

B. UPDATE/EVALUATION OF ASHEVILLE DESIGN CENTER'S PROPOSED ALIGNMENT TO I-26

Ms. Cathy Ball, Director of Transportation and Engineering, said that the purpose of this report is to update City Council on the status of the evaluation of the Asheville Design Center's (ADC) proposed alignment for the I-26 Connector.

In October 2007, Council authorized staff to contract with Figg Bridge Consultants (Figg) to evaluate the ADC's proposed alignment for the I-26 connector. The City of Asheville and Buncombe County partnered to pay for these Figg Bridge partnered with Lochner to complete this work by January 18, 2008, as requested by the N.C. Dept. of Transportation (NCDOT).

A Technical Review Committee (TRC) consisting of two City representatives, two County representatives and two representatives from the Asheville Design Center provided oversight to the process.

The evaluation process included the following:

- reviewing the ADC's proposal;
- meeting with NCDOT to evaluate their concerns about the ADC's proposal;
- developing alternative designs to address NCDOT concerns;
- meeting again with NCDOT to review revised design proposal;
- making adjustments with revised design;
- meeting with NCDOT and TRC to propose the final recommended design; and,
- preparing final report to NCDOT for January 18, 2008 deadline.

Figg and Lochner have revised the ADC's design to meet the design guidelines required by NCDOT and FHWA. The revised design appears to accomplish the goals of the original ADC's design. The only goal that was not able to be met was a double-decker design for the new bridge.

At the January 4, 2008, meeting, Figg presented the design to NCDOT and the TRC. NCDOT representatives could not see any major problems with the design but stated that they would need to review more detailed design drawings before stating that the design is feasible and should be added to the Environmental Impact Statement for the I-26 Connector. NCDOT representatives wanted specifically for the constructability and capacity issues to be addressed in the final report. NCDOT indicated that it would take them two months to review the report once it is received on January 18, 2008.

Figg will provide a report to NCDOT on January 18, 2008. They then made the following presentation to City Council:

Mr. Manuel Carballo, Director of Texas Office of Figg Engineers, explained the Project stakeholders are: National Highway System - FHWA; State of North Carolina - NCDOT; Local Communities - City of Asheville, Buncombe County, and Asheville Design Center (ADC).

Communication is the key through (A) clearly understanding stakeholders objectives and concerns; and (B) continuous and successful feedback of review through (1) kick-off meeting in Asheville; (2) teleconferences and electronic data sharing with alignment adjustment plans in progress; and (3) multiple interactive team progress meetings.

Key objectives for the NCDOT are (A) safe and functional system; (B) meet local and federal design standards; (C) consider environmental impact; and (D) meet operational requirements.

Key objectives for Asheville are (A) context sensitive design - minimize footprint; (B) separation of local and interstate traffic - separate existing I-240 and I-26 traffic from local traffic on Patton Avenue; and (C) aesthetics - opportunity for new "signature" bridge over the French Broad River and overall project visual quality.

Using a map, they explained the ADC's Alternate 4B as follows: (A) horizontal adjustment - French Broad River crossing (1) meet roadway design standards; (2) minimize footprint; and (3) signature bridge possibility (a) increased I-26 radii to minimum allowed by AASHTO; and (b) increased I-240 ramp radii to minimum allowed by AASHTO; (B) merging I-26 with US 19-23 while minimizing footprint with limited horizontal clearance and close proximity to historic property (1) extended I-26 bridge through constricted area and (2) I-26 near Montford Historic District viaduct concept; and (C) separate local and interstate traffic (1) Patton Avenue and I-26 interchange; and (2) Patton Avenue with Hill Street/I-240/US 19-23 (a) added connection to Regent Park and Holiday Inn Drive; and (b) service road added to provide connection to Hill Street.

They then reviewed the ADC adjusted alignment relative to the NCDOT Alternative 4.

The remaining schedule includes (A) final report - January 18, 2008; and (B) NCDOT review.

Mayor Bellamy said that the NCDOT has asked for two months to review the report and at that time we will receive their report.

Councilman Russell felt that the ADC adjusted alignment is a good example of a smaller footprint and hoped that the NCDOT would review it carefully. He felt the ADC alignment is a good gain for our community.

Councilman Mumpower expressed concern of the cost of the viaduct vs. the NCDOT's recommendation. Mr. Carballo responded that said that in coordination with the NCDOT they agreed that we would submit all the technical drawings by January 18. That would give them a head start on reviewing the concept, while they develop the cost estimates. While the NCDOT will be reviewing the technical drawings with their cost estimate, they hope to save time in review. He explained why it was their opinion that a lot of the cost for the viaduct will be offset by using the existing right-of-way. The increase in cost for the construction of that type of structure over US 19-23 will go up; however, the rest of the project will not be penalized.

Councilwoman Jones confirmed with Mr. Carballo that to move forward with the ADC alternative alignment will not delay the construction date. She was pleased with the different players all working together on the same team.

Councilman Newman spoke in support of the ADC alternative alignment and moved to (1) express Council's appreciation to the NCDOT for its cooperation with the City of Asheville, Buncombe County, Figg, Lochner and the ADC to consider the viability of the ADC's Alternative 4B alignment for the I-26 connector project as Alternative 4B has many advantages for the community and region; and (2) as the Asheville City Council believes there is strong community support for this design, we urge the NCDOT to support consideration of Alternative 4B and to move forward with expeditious completion of the project. This motion was seconded by Councilwoman Cape.

Mayor Bellamy said that the Governor has appointed her to the 21st Century Transportation Committee to look at transportation throughout North Carolina. At the December, the Committee talked about the connector and this was the first time the City of Asheville was discussed. It's important that the community realize that the first phase the NCDOT recognizes is "malfunction junction" (I-26, I-240 and I-40 interchange). The report was that there was \$239,000 Million set aside for that to happen. But all of the projects have been delayed two years because of funding. That was the report the Committee received. She does not want this process to be blamed for the delay. She reiterated that the NCDOT told the Committee that all of the portions of the loop projects across the state are delayed by two years because of funding. She urged the community to rally around fixing "malfunction junction" first with no delays. She noted that the City of Asheville was one of the original loop projects for the NCDOT, but the last to get started. What we have tonight is about the same thing that Council passed in 2000. In 2000 Council said there were some objectives we wanted to achieve, i.e., sensitive to the design, separate traffic, and have something nice in our City. Tonight she hoped Council would reaffirm those objectives.

Mr. Alan McGuinn, Chairman of the ADC, thanked Council for having the vision to initiate this process. The ADC endorses this plan, however, there are still some things that need to be worked out but it basically fits all of their requirements. He noted that the NCDOT has been cooperative throughout this process. The ADC is still committed in helping in any way they can.

Mr. Reid Todd felt this design does not separate enough the trucks carrying nuclear waste products through our community.

Councilwoman Cape asked for a friendly amendment to encourage the NCDOT to prioritize the interchange of I-26/I-240 and I-40 interchange. Councilman Newman accepted the friendly amendment.

At 6:38 p.m., Vice-Mayor Davis announced a very short break.

Mayor Bellamy read into the record the following, which is a portion of the minutes from the 21st Century Transportation Committee meeting held in December, 2007 (Mr. Calvin Leggett is the Manager Program Development Branch of the NCDOT): "Mayor Bellamy thanked Mr. Leggett for what had been done for Asheville. She said looking at the reality that Asheville will see a 2 year delay because of the funding and later on you said funding to address I-26, I-240, and I-40 interchange will be addressed, she wanted to make sure those 2 statements are not in conflict. She asks if they will see that happen first because that is something they have been talking about as a community since the early 90's. Mr. Leggett answered, yes, and if you go to the chart that shows what is being proposed to fund in the draft program versus what was in the program the Board adopted last summer, what you will see is the one city that actually showed a significant increase in funding is Asheville. There has been a tremendous increase in the anticipated cost in price there but in order to keep the delay in Asheville to only 2 years most of the additional revenue went to Asheville. It was trying to not have one area delayed much more than any other." She reiterated that the delay is not caused by what Council is doing, but because of funding. We do have funding for the first phase which is I-26, I-240 and I-40 interchange.

Councilman Mumpower felt there was a missing sense of urgency in our discussion about completing the I-26 corridor. He does not believe that Council's on-going discussions have not delayed the project. He believes our deliberations have created hurdles and complexities. He also expressed concern about plans to move viaducts; and that we are investing our energies in things that are not realistic to our costs. He felt this was a nice effort and well intended, but the sense of urgency is missing.

The amended motion made by Councilman Newman and seconded by Councilwoman Cape carried on a 6-1 vote, with Councilman Mumpower voting "no."

IV. PUBLIC HEARINGS:

- A. PUBLIC HEARING TO CONSIDER THE MASTER PLAN AND REZONING FOR THE PROJECT IDENTIFIED AS HORIZONS, LOCATED AT 136, 176 AND 180 MERRIMON AVENUE AND 17 AND 23 ELOISE STREET FROM HIGHWAY BUSINESS DISTRICT, COMMUNITY BUSINESS I DISTRICT AND RS-8 RESIDENTIAL SINGLE-**

FAMILY HIGH DENSITY DISTRICT TO URBAN VILLAGE DISTRICT FOR A MIXED USE DEVELOPMENT

Urban Planner Julia Cogburn said that the applicant has requested this matter be continued to July 15, 2008, for several reasons. However, the main reason is their interest in continuing to work with the neighborhood, especially since a valid protest petition was submitted (which will remain in effect until July 15, unless it is withdrawn).

Councilman Mumpower moved to continue this public hearing to July 15, 2008. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilwoman Cape voting "no."

B. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR GOVERNOR'S VIEW COTTAGES, LOCATED AT 190 AND 180 GOVERNOR'S VIEW ROAD

ORDINANCE NO. 3573- ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR GOVERNOR'S VIEW COTTAGES, LOCATED AT 190 AND 180 GOVERNOR'S VIEW ROAD

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

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

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:53 p.m.

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

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

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

Ms. Bernstein said that this is the consideration of the issuance of a conditional use permit for property for Governor's View Cottages, located at 190 and 180 Governor's View Road for the development of 14 single family residences.

This request is to review conceptual site plans for a conditional use permit (with 1-unit density bonus and altered site standards) due to exceptional development standards pursuant to Section 7-16-2(b)(17) of the Unified Development Ordinance (UDO) to construct a 14-lot single-family residential development.

The project site consists of two parcels located at 180 and 190 Governor's View Road south of Tunnel Road with a combined area of 2.15 acres (according to site plans). The parcels and immediate area are zoned RM-6 but other nearby zoning districts include RS-4, RM-8 and HB (City Exhibit 4 - Location Map and City Exhibit 5 - Aerial Map). The applicant is requesting to create 14-lots (reduced-size) with three varieties of single-family residences on the site. Access to the project is proposed via a new one-way loop road (public) off of Governor's View Road (City Exhibit 6 - Site Plan).

One of two existing structures will be removed and the other, a vernacular wood dwelling, will be retained and incorporated as the dwelling structure for lot 14. The 13 new structures are proposed as a mix of three styles, all two-stories tall. They will be certified healthy built homes. Sufficient off-street parking for the proposal (28 spaces) has been included as well as sidewalks around one side of the new loop road and along Governor's View Road.

Building Data: 14 Single-family residential units

Type A – (6 units) 2-story with attached garage, 3 bedrooms, 1333 SF

Type B – (3 units) 2-story with walk-out basement, 2 bedrooms, 1980 SF

Type C – (4 units) 2-story with attached garage, 2 bedrooms, 1404 SF

Existing Structure – (1 unit) 2-story with detached garage, 2 bedrooms, 1200 SF

Landscaping is proposed according to the current ordinance, and includes street trees, tree save area and building impact landscaping (City Exhibit 7 - Landscape Plan). Significant vegetation is being retained onsite and a portion will be used as credits. The remaining available credits are not being applied to required landscaping, but rather will simply bolster the natural features of the site. The applicant is seeking to reduce the required tree save area from 0.65 acres to 0.57 acres, as the reduction will assist

in maximizing the efficiency of solar panels incorporated throughout the project (must be approved by City Council). Open space is required and the applicant is proposing to incorporate 10,472 s.f. of the 18,730 s.f. required with a *fee-in-lieu* for the remaining 8,258 s.f.

Stormwater will be handled through a bio-retention area in the central open space to treat and detain surface runoff from the street and sidewalks. Also, pavement widths have been reduced to the minimum in order to encourage runoff to infiltrate into this natural area. Flushed curbs around the central open space area also assist in drainage. This project further seeks to reduce impervious surfaces by incorporating green roofs on garages wherever possible.

Incorporation of exceptional development practices allows for a project to seek alteration on standards for density, height, number of residential units per building, setbacks, lot size and lot with. For this project, the developer is providing higher quality building design and orientation sensitive to surrounding neighborhood context, significant use of green building techniques, enhanced stormwater management and significant vegetation preservation. They are seeking a one-lot density bonus and alterations to reduce the minimum lot size, to eliminate the required side setbacks between lots 7 & 8 to incorporate a shared garage, and to reduce the 70' lot width requirement (City Exhibit 8 - Colored Site Plan).

At the November 5, 2007, Technical Review Committee (TRC) meeting, this project was approved with the conditions outlined in their staff report. Neighbors present voiced concern over the impact of increased traffic along Governor's View Road as a result of the 12-additional houses. Discussion followed on what benefits traffic calming could provide, issues with retaining Hemlocks that may or may not be diseased, and safety concerns related to a retaining wall on a neighboring property.

At the December 5, 2007, Planning & Zoning Commission (P&Z), this project was approved unanimously (5-0, 5 members present). One neighbor expressed concerns about a retaining wall running on the properties adjacent to the north and northwest of the project site and possible safety issues resulting from having houses close to this grade change. The developer expressed that he is willing to work with the neighbors on installing either a privacy fence or increased vegetation along that corner. P&Z added a condition to their approval that an agreement on this issue would be worked out prior to the City Council hearing (City Exhibit 9 - Site Plan showing proposed fence alignment).

City Council must take formal action as set forth in section 7-5-5(e)(3) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to section 7-16-2(c) of the UDO. Staff's review indicates that all seven standards are met as proposed in the site plan.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

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 proposed use and development of the land incorporates and preserves several areas of existing mature vegetation. Otherwise, no significant natural or topographic features exist on the site which would make this condition an issue.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The development is not expected to injure the value of adjoining or abutting properties, especially given the commitment to preserve mature vegetation along Governor's View Road, in the center and along the western edge of the property as well as the high-quality of building design and materials and green site design practices.

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.

This area is zoned RM-6 which is intended for either single-family or multi-family development. The proposal for these modestly-sized 14 single-family homes is in harmony with the scale, bulk, coverage and character of the area. This request includes a density bonus for one additional lot beyond what the site would allow, by incorporating Exceptional Development Standards. Staff does not believe that the one additional lot creates an incompatible situation as it relates to surrounding density.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth

policies, sustainable economic development strategic plan and other official plans adopted by the City.

The *Asheville City Development Plan 2025* proposes a Smart Growth development pattern by encouraging compatible higher density residential infill projects (pg. 31). One way to accomplish this goal is to apply existing zoning tools to incentivize higher density residential infill development. This project accommodates utilizes the "Exceptional Development Standards" density bonus. The applicant has also incorporated green building concepts into the design to reduce the environmental impacts of building construction, i.e. smaller houses, energy efficient construction, renewable energy practices, quality materials, reduced impervious surfaces and less stormwater impact and tree conservation (pp. 72-75).

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

This proposed development is located near major road facilities, interstate connections and within one mile to a City bus route (#13). In addition, basic infrastructure appears adequate and preliminary review by other service providers has not revealed any problems for future service to the development.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

Although increased traffic has been raised as a concern by neighbors, the City Traffic Engineer has noted that 100 vehicles per hour would be the trigger for requirement of a Traffic Impact Study. At an estimated 20 vehicle trips per hour, a development of this size is not expected to cause undue traffic congestion or create a traffic hazard.

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

Pros:

- Project incorporates green building techniques and environmentally sensitive approach to development.
- High density infill development and stormwater best management practices further the goals and objectives of the comprehensive plan.

Cons:

- The project exceeds the density allowance and does not comply with lot widths, lot sizes or side setback (lots 7 & 8) under the RM-6 zoning district unless the Conditional Use Permit and density bonus is approved.

Based on the above findings and that the project appears to comply as Exceptional Development, staff recommends approval of the conditional use permit and approval of the 1-unit density bonus and development standard modifications including the reduced tree save area based on exceptional development as requested by the applicant.

Mr. Tony Hauser, representing Ambient Design Group, spoke in support of the conditional use permit, while showing Council several architectural design and elevations of the different units (Applicant Exhibit 1).

After rebuttal, Mayor Bellamy closed the public hearing at 7:00 p.m.

Councilwoman Cape moved for the adoption of Ordinance No. 3573, to approve the Conditional Use Permit, adopting the proposed master plan for Governor's View Cottages with the requested modifications to lot size, lot width and side setback for lots 7 & 8; approving the 1-unit density bonus; and reduction of the required tree save area from 0.65 acres to 0.57 acres, subject to the conditions recommended by City staff and the Planning & Zoning Commission, (finding that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation), subject to the following conditions: (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; (5) This project will undergo final review by the TRC prior to issuance of any required permits; (6) The developer and neighbors on the north and northwest sides of the property will agree on a privacy fence/security screening feature to run along the retaining wall that is on the neighboring parcels; and (7) To ensure that the reduction in green space requirements is formalized by the green roofs; and (8) That the materials and designs shown to Council are a conditional for approval. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE

At 7:01 p.m., Mayor Bellamy announced a short recess.

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

Mayor Bellamy said that this public hearing and the following two public hearings (1) to consider an amendment to the Unified Development Ordinance (UDO) to create a mixed use development district; and (2) to consider an amendment to the UDO to provide for development standards for parking garages are related. The public hearings were held on August 14, 2007, and postponed from September 18, 2007, until this date. All would need to be voted on separately.

Interim Planning & Development Director Shannon Tuch said it's been over two years that City staff and representatives of the Merrimon Avenue area have worked together to explore some alternative development standards for the corridor. This is largely been in response to some notable development projects that have been developed during the same time period. In the fall of last year, City Council had the opportunity to review some of the report information that had been developed, along with some proposed recommendations which included the creation of a new Mixed Use District (MXD) as well as a large scale rezoning that would go with it. Consideration of these recommendations was delayed primarily over concern expressed by some of the business owners along the corridor. This concern led staff to request a continuance in order to conduct a second community meeting, but also to perform some additional research and to explore some other options that hopefully would address some of the original concerns. The information gained from the meeting did help our staff focus and we are now recommending that we go in a different direction, which is outlined in the following staff report. Should Council support this direction, we would recommend that the three public hearing items that are related, as read by Mayor Bellamy, actually be withdrawn and that Council direct staff to develop more specific standards that support the recommendations in the report to be reconsidered. We are asking for some conceptual support and some direction from Council over the recommendations outlined in the following staff report.

Ms. Tuch said that because these recommendations are substantially different than what had been considered previously by the Planning & Zoning Commission (Commission), staff would actually recommend that this be remanded back to the Commission, or rather a new initiative that would begin again anew with the Commission for this consideration. This would also allow some additional opportunity for community input and some additional involvement in crafting of the specific standards.

Ms. Tuch then summarized by saying they are recommending that we amend the existing sidewalk standards to allow for a slightly larger sidewalk and to maintain the existing planting strip requirement. This would result in a sidewalk planting strip cross section that is one foot larger than what would be required today. The former recommendation had actually proposed a reduction in the planting strip requirements. If we get the opportunity to put trees in that green strip we really want a minimum of seven feet. The large majority of Merrimon Avenue will be - just a green area, a utility strip, and we want a minimum of five feet because that is the easiest to maintain in order for us to access water lines and some of the other utility providers can access their infrastructure as well. Additionally, we would like to recommend that we provide incentives for MXD. This would be different from what was previously proposed, which was a mandated development pattern. We are suggesting we provide incentives for this kind of development. We are asking to maintain the existing standards that can be realized through the existing CB I and CB II zoning, but add some additional standards that would incentivize a new product. The easiest way to incentivize it is to allow some additional densities, some additional height and possibly some additional square footage. In our research we realized that there are no buildings on Merrimon Avenue that exceed 19,000 square feet, even though the CB II zoning district allows a building to go up to 45,000 square feet. Our hope was that we could collapse the CB I and CB II districts together - create a new threshold at 25,000 square feet, which would render all of the buildings on Merrimon Avenue conforming to size. It would make it easier for us to incentivize by allowing a building to go up to about 45,000 square feet through multiple stories and possibly we could encourage some height incentives that could make them a little more compatible with the Highway Business District, which is the other predominant district on the corridor. We would also like to encourage that there be an on-going dialogue and eventually develop a collaborative partnership with other agencies to explore some other pedestrian enhancements on the corridor. Because Merrimon Avenue is a N.C. Dept. of Transportation (NCDOT) right-of-way, it does make it more difficult for us to make any changes to that corridor. Some improvements such as cross walks, signal enhancements, bump outs, street trees - all of those things would require NCDOT cooperation. This has been one of the stumbling blocks in the past. She hoped there is an opportunity reestablish a relationship and explore what would be needed. We don't want to close the door on that. The last recommendation is really an on-going recommendation. It really goes without saying that we really need to periodically examine the development activity that's occurring in the City and to do that in context with the existing market, the existing development practices (which change significantly over time), the City's strategic goals and our existing development standards. It's great to look at other municipalities and other areas to see how they've done it and steal some of their really good ideas and take advantage of the lessons they have learned. But we have to do that in context with the existing conditions in Asheville. We are looking at trying to create something that is more Asheville specific in nature and meets our specific needs. Just taking the time to do that little bit of extra research of the inventory of what exists on Merrimon Avenue today really helps staff understand what is there and why it's there. And, as a result we are proposing something that will be a better product for Merrimon Avenue.

The following is the staff report: "The purpose of this report is to provide a summary and analysis of community input collected on the issue of growth and development along the Merrimon Ave. corridor. Feedback was collected at a community meeting hosted by the City of Asheville Planning department on November 15, 2007. The department has also collected written comments from the public after the meeting. In addition, staff continues to reference survey information and study group recommendations that had been collected earlier in the zoning study process. Based on this information, this report includes staff recommendations for managing growth and development along the Merrimon Ave. corridor as well as areas for further analysis or consideration.

Community input revealed concerns about three areas into which the following analysis is divided: enhanced pedestrian comfort, flexibility for business/property owners, and managing growth over time.

Pedestrian Comfort

Fortunately, when it comes to pedestrian comfort there is an abundance of survey and study information that clearly documents the desirable characteristics of pedestrian friendly areas. The general categories can be further divided into any number of sub-categories but are generally summarized as:

- 1) Wide, unobstructed sidewalks or paths
- 2) Adequate lighting
- 3) Minimize conflict with automobiles (reduce driveways, separate pedestrian paths from vehicular ways)
- 4) Provide clear signalized crosswalks
- 5) Adequate bus stops and other street furniture

The Mixed Use District (MXD) draft attempted to enhance pedestrian comfort by requiring a slightly larger than normally required sidewalk (increased from 5-feet to 6-feet) with a required green planting strip between the sidewalk and road. The planting strip would help to separate the pedestrian from the vehicular traffic and, in an effort to minimize impact to developers, the Merrimon Ave. Study Group proposed reducing the 5-foot planting strip normally required between the sidewalk to four feet. This would result in a 10-foot wide cross-section (4' p.s. + 6' sidewalk) which is identical to the normally required sidewalk cross section (5' p.s. + 5' sidewalk) but places a slightly higher priority on the sidewalk. Ideally, trees should be located within the green strip to help provide a stronger separation; however, this will be more challenging along Merrimon since the majority of the green strips would be located within the N.C. Dept. of Transportation (NCDOT) right of way and also have waterline and other utility infrastructure in conflict. Absent of any utility infrastructure, street trees in the right-of-way would have to receive an encroachment agreement from NCDOT. Similarly, adding signalized crosswalks on Merrimon would also have to be coordinated through and approved by the NCDOT. Lastly, a more substantial effort would have to be undertaken to remove the most common sidewalk obstruction of overhead power lines. Some preliminary due diligence has been initiated revealing that to bury these lines would require revenue in the amount of 10.8 million dollars.

Other roadway enhancements such as reduced driveways and adequate lighting help to serve not only the pedestrian but the motorist as well by promoting clear and uninterrupted traffic flow. Street lighting, again, is generally maintained by the NCDOT while the City of Asheville has site lighting requirements that are reviewed with new development proposals. A new focus group, including city staff and other interested stakeholders, has been formed and will be examining the City's lighting requirements in the coming months with the end goal of proposing revisions to those standards that better address light intrusion while maintaining or enhancing safety. Reducing driveway cuts along with increasing other street/site amenities (bus stops, benches, bike trash cans, etc.) have been best accomplished through those development proposals that are seeking to mitigate other impacts proposed through a Conditional Use Permit or Conditional Zoning. These opportunities could be enhanced through City improvement plans and through incentives offered to private developers as well.

Staff recommends the following to help address pedestrian comfort on Merrimon:

- Revise minimum sidewalk requirements to:
 - Widen the minimum width of a sidewalk from 5-feet to 6-feet
 - Maintain the minimum 5-foot planting strip - where possible, trees should be planted within the green planting strip and should meet the City's landscape requirements for planting strips (7-feet)
 - Eliminate the option for sidewalks to be located behind the curb
 - Eliminate fee-in-lieu option
- Continue to explore revenue options to bury power lines;
- Participate with site lighting focus group (recommendations to be presented separately);
- Re-initiate discussions with NCDOT regarding pedestrian enhancements on Merrimon (street trees & signalized crosswalks); and

Create some incentives to private developers to include pedestrian-oriented site enhancements in their development proposals.

Flexibility for Business and Property Owners

Development opportunities are generally limited by two things: site specific constraints (topography, lot size, limited access, etc.) and development requirements. While there is little the City can do to alleviate site constraints, development requirements can be reviewed for new opportunities. Currently, the majority of the Merrimon corridor is zoned Community Business-I (CB-I) and Community Business-II (CB-II). The primary difference between these two districts is the size of the building allowed (12,000 s.f. versus 45,000 s.f.) and the intensity of some uses where CB-II allows drive-thru's and CB-I does not. Both districts limit height to 40-feet and generally allow for the same types of uses with otherwise identical development requirements. A general survey of the properties of Merrimon reveal that the large majority of lots are under one acre and none of the CB properties support a building over 20K square feet – the major land use is retail (50%) with a small amount of service and other office uses (20%), and even less residential (10%) directly on the corridor.

New development opportunities could be offered along the corridor with incentives to encourage more diverse land uses. A mixed-use building product would most efficiently address the desire for retail along the corridor while providing opportunities for office and residential uses which help to address other strategic goals. A parallel set of development standards that required a more urban form (similar to the formerly proposed MXD standards) could be adopted and incorporated into the existing zoning district standards. In exchange for this more efficient product, higher thresholds for height and building mass could be offered without requiring a rezoning.

Consideration of this alternative, along with the property research, offers the opportunity to accomplish a second goal of a simpler, less complicated ordinance where the CB-I and CB-II zoning districts are collapsed into a single CB district. The average lot size found in the two districts is not significantly different (.37 acres versus .57 acres) and no CB-II property takes advantage of the 45K s.f. maximum where the largest CB-II building is only 18.5K s.f. Drive-thru's can also be accommodated by adding them as a use-by-right-subject-to-special-requirements (USSR) which would allow them by right provided they could meet certain basic standards. Consolidating these two districts allows for the opportunity of establishing a new building size maximum that would render all the existing buildings conforming but could further incentivize the mixed-use product. It would also have the added benefit of increasing the development opportunities for those properties currently zoned CB-I (which outnumber the CB-II properties 2:1) and could possibly render some non-conforming drive-thru's conforming. By limiting building sizes to 25K square feet for traditional suburban style development and 45K square feet for a mixed use product, this would allow all of the existing buildings to remain conforming while new development would be strongly incentivized to produce a mixed use product. If this were considered, then special attention should be paid to maintain opportunities for grocery retailers as well as preserving character defining structures on the corridor.

Lastly, sacrificing some flexibility may be necessary to achieve other desired outcomes. One common comment from the community meeting addressed the concern over buildings being placed so close to the street that it created either an uncomfortable or unappealing effect. Minimum setbacks should be established to address this concern. This will likely require that existing standards that allow for the reduction of front setbacks through pedestrian oriented design be removed or reduced.

Staff recommends that flexibility to business and property owners be improved by:

- Incorporating incentives for a mixed-use product into the existing CB-I and CB-II zoning districts - these standards should be allowed for uses by right, as opposed to site-specific conditioned processes that must go before Council;
- Consider simplifying development standards by consolidating the CB-I and CB-II zoning districts with special care to improve non-conformities and incentives for preserving character defining structures; and
- Establish minimum setbacks that allow for efficient use of the property while preserving comfort and form.

Managing Growth over Time

Instead of focusing on the unrealistic goal of reducing congestion on Merrimon Ave., this study has concentrated on ways to improve quality of life and promote a more sustainable development pattern given the existing conditions. It is unlikely that automobile traffic will be alleviated in the coming years so any revisions to our development standards must take into consideration the need to accommodate automobile traffic while those same growth and development pressures are also necessitating the incorporation of other modes of transportation including mass transit, bicycles, and pedestrians. Accommodating existing traffic while providing for alternative modes ensures safe and convenient access, and by allowing development to grow vertically along the corridor ensures that development is concentrated in appropriate areas where multi-modal access can be obtained.

On the public side, new relationships and revenue sources should be explored that would allow for some much needed capital improvements; however, coordinating private development to address strategic goals should also be a priority with a particular focus on costs associated with energy, housing, transportation, construction and other realities of the current market. Keeping the existing entitlements unchanged provides some stability to the market while the creation of new parallel development standards helps to provide opportunity for additional growth and development.

Lastly, managing growth and development requires constant re-evaluation of the market and existing development practices. Periodic analysis of development projects on the corridor may prove to be revealing, particularly when benchmarked against other areas of the city (and other cities). This and other research that helps to determine housing, office, and employment needs should help shape development patterns through land use regulations (among other things). Initiatives and practices across the country should also be reviewed and considered.

In order to effectively manage growth and development along the corridor, staff recommends the following:

- Existing development standards in the CB-I and CB-II districts remain largely unchanged while new opportunities are provided through a set of alternative development standards that guide development towards a mixed-use smart growth development pattern;
- Partnerships between the City and other stakeholders be explored to design and fund road and other infrastructure improvements; and
- Periodic analysis of development activity should be conducted and reviewed in context of the existing market, strategic goals, and current development standards – findings should be documented in a report.

Summary

The proposed recommendations offer an alternative that encourages or guides development along the corridor through incentive based approach as opposed to mandated changes imposed through a rezoning. Under this proposal, existing development opportunities remain relatively unchanged with new development options introduced through an alternative set of development standards that affords greater building height and size in exchange for a multi-modal oriented mixed-use product. The incentive to encourage a more smart growth development pattern may be enhanced by consolidating the two primary zoning districts (staff would be seeking Council direction on this matter). Relatively minor changes to sidewalk requirements are also proposed based on the common interests of the both the business and residential community. Lastly, to effectively manage growth along this corridor requires cooperation from several key agencies who must be involved in an on-going discussion regarding future needs; monitoring and analysis will also be critical to identifying needs.”

Mayor Bellamy would like for Council to consider the recommendations and the specific one that these items be withdrawn. At the Council retreat there will be discussion of holding worksessions and she felt this would be a prime candidate for a Council worksession to talk about what is it that we are looking for in this process. She felt it would help Council by looking at this process from beginning to end and listening to the concerns from the neighborhoods and property owners. She felt it would be appropriate to have a worksession before it goes back to the Commission, to look at what are we trying to accomplish with this corridor. She suggested Ms. Tuch provide pictures at the worksession so Council can better understand what is being proposed.

Vice-Mayor Davis voiced concern that we might lose sight of the work that has already been done. He did, however, agree that Council does need a good working knowledge of the issue. Since this would be a worksession, we would not be entertaining public comment, but only for Council to familiarize themselves. But, if we are going to derail the process and not take into account any of the work that has gone on before and just send it back to the Commission he would not be supportive of that.

Mayor Bellamy reiterated that Council needs a good working knowledge of what is happening with the corridor. If we are looking at additional corridor studies, we need to have a successful one under our belt in order for people to buy into a process. We need to be articulate as we can.

Councilwoman Cape moved to withdraw the three public hearings read by Mayor Bellamy and direct staff to bring them back to Council at one of Council's first worksessions so that Council can review all the public work that has been done before, along with recommendations of staff so that Council can fully understand what the next step will be. This motion was seconded by Councilman Russell.

Councilman Mumpower would not be supportive of the motion. He felt that this has been a flawed process from the start. He thinks Council has misled the untold number of people who have waded through hours and hours of meetings and deliberations to try to come to a conclusion. He felt Council should tackle these items until some conclusion is reached. He felt Council may use some of their positions, but ultimately Council will trump their work.

The following individuals voiced their dismay that a lot of the information that has been worked on by the business/property owners and the neighborhoods will be lost and that Council should allow the groups to continue working on a final product:

Ms. Billie Buie
Mr. Chris Peterson
Mr. Benjamin Gilliam, President of the Five Points Neighborhood Association
Mr. Foster Shriner
Ms. Cynthia Kovach
Ms. Eileen Wilson
Ms. Leslee Kulba
Mr. Mike Lewis
Ms. Carol Ann Manheimer

There was discussion amongst Council about the purpose of the worksession and how the work to date by the groups has given Council a great foundation. The motion on the floor should not stop the groups from meeting; however, Council needs to be informed and clear as possible.

Councilwoman Cape moved for an amendment to her motion to encourage another meeting of both groups, along with outreach to the original business/property owners group and outreach to the original neighborhood group, and use our enhanced public negotiating skills for a good meeting before it comes to Council, so Council is presented with the latest version of what the community feels like they can live with together. This amendment was accepted by Councilman Russell.

Vice-Mayor Davis felt we have dealt with this a long time. He felt the proposal to collapse the two districts goes a long way. He felt what is before Council represents good work and is a good starting place. Instead of Council having a worksession to review what we have already been told, he would prefer it go back to the community and then from that point go back to the Commission. After that, then it can come back to Council in the form of a worksession, if necessary. He didn't see a worksession to bring Council up to date would be terribly helpful at this point.

Councilman Russell agreed to the amendment to the motion in that it will add an additional step for conversation in order for all the stakeholders to look at the changes to see if there is buy in.

The amended motion made by Councilwoman Cape and seconded by Councilman Russell carried on a 5-2 vote, with Vice-Mayor Davis and Councilman Mumpower voting "no."

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

This public hearing was discussed and withdrawn in conjunction with Public Hearing C and E.

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

This public hearing was discussed and withdrawn in conjunction with Public Hearing C and D.

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. BOARDS & COMMISSIONS COUNCIL LIAISON ASSIGNMENTS FOR 2008/09

Discussion and appointments were made for the City Council liaison and mandatory seats for Council on the various boards and commissions. City Clerk Lipe has a complete listing of all appointments made.

VII. OTHER BUSINESS:

Claims

The following claims were received by the City of Asheville during the period of December 21, 2007 through January 10, 2008: Bobcat of Asheville (Parks & Recreation), Julie Jamieson (Streets), Robert Morgan Sr. (Transit), Mary Lucas (Fire), Martin Melody (Sanitation), Claude Brown Jr. (Transit), John R. Follett (Transit), Janet Cordell (Transit), Patrick Temple (Water) and Betty

Martin (Streets). These claims have been referred to Asheville Claims Corporation for investigation.

Lawsuits

The City received the following Complaint on December 19, 2007: The Estate of Mark Wayne Thompson and Jeffrey Lawrence Brown vs. the City of Asheville and the Asheville Police Department. The nature of the proceeding is a Complaint for wrongful death and personal injury resulting from negligence of Asheville Police Department officers.

The City received the following draft Complaint and Settlement Brochure on December 19, 2007: Troy Steven Wyatt vs. the City of Asheville and the Asheville Police Department. The nature of the proceeding is a Complaint for personal injury resulting from negligence of Asheville Police Department officers.

Miscellaneous

Councilwoman Cape welcomed the City's first Sustainability Energy Coordinator Maggie Ullman, whose responsibilities will include supporting the Sustainable Advisory Committee, to do research and maintain an energy use inventory with measurements for the City and to do community outreach.

Councilman Davis said that there is a high incident of radon in Buncombe County and urged citizens to pick up a free radon test kit from the Extension Agency or from the WNC Regional Air Quality Agency on Mt. Carmel Road.

Mayor Bellamy congratulated the citizens of Asheville as being designated as a "Happy City."

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Spencer Hardaway said that he would e-mail Council of his comments regarding the Citizen Police Review Board.

Mr. Reid Thompson asked for clarification of limiting public access to the audio visual equipment during the public comment period. Mayor Bellamy said that she enforces the City Council's Rules and in their Rules adopted April 13, 2004, it reads "Any document or information that is to be used in a public hearing or public comment period shall be furnished in advance to the City Clerk in an electronic format or 15 copies thereof. This rule may be waived for good cause." In response to Councilman Newman, Mayor Bellamy said that the documents must be submitted 14 days prior to the Council meeting, which was agreed upon by Council in July of 2007.

Mr. Fred English commented on the Pack Square Project, the Veterans Memorial, and the City regulating flags.

Mr. Jim Groce asked for a point of clarification regarding his two properties on Merrimon Avenue. City Attorney Oast said that he would investigate his point and contact him.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:00 p.m.

CITY CLERK

MAYOR