

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**

Girls on the Run, with Claxton Elementary School, led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Russell gave the invocation.

**I. PROCLAMATIONS:**

**A. NOBEL PRIZE WINNERS**

Mayor Bellamy said that the City of Asheville was pleased to recognize climate scientists in our community who contributed to one or more of the reports of the Intergovernmental Panel on Climate Change (IPCC). She said that the 2007 Nobel Peace Prize was awarded to the IPCC and Vice President Al Gore in recognition that climate change could threaten world peace, and that the work of the IPCC and the advocacy of Vice President Gore sounded an important wake-up call for our society to confront this challenge.

Hundreds of authors from all regions of the world devoted considerable time and effort from the start of the IPCC effort in 1990. Many of those that we honor today are climate scientists from the National Oceanic Atmospheric Administration's National Climatic Data Center (NOAA-NCDC) here in downtown Asheville. Their contributions to the science underpinning the IPCC reports reflect favorably on the U.S. Government, NOAA, and our community. The work highlights the importance of the fields of atmospheric and environmental science in our community, particularly the contributions made by NCDC since it was established in the Grove Arcade in 1951.

Scientists are, by nature, inquisitive. Research efforts like the IPCC are performed with many thousands of hypotheses, many hundreds of hours of computer processing, and many cups of coffee shared between colleagues. That such a great honor emerged from these work experiences right here in our community is something that we can all be very proud of.

She then recognized the following individuals with a City of Asheville Certificate (composed by Ann Vasilik): Tim Owen, Richard W. Reynolds, John J. Bates, Michael Crowe, Robert E. Eskridge, Robert G. Quayle, Byron Gleason, Thomas R. Karl, David Wuertz, David R. Easterling, Thomas C. Peterson, Jay Lawrimore, Pasha Ya. Groisman, Lenard Bernstien, Russell Vose, David Levinson and Richard Knight.

**B. PROCLAMATION PROCLAIMING MARCH 16-22, 2008, AS "MULTIPLE SCLEROSIS AWARENESS WEEK"**

Mayor Bellamy read the proclamation proclaiming March 16-22, 2008, as "Multiple Sclerosis Awareness Week" in the City of Asheville. She presented the proclamation to Dr. Mary Sedgwick, with Mountaintop Endeavors, who briefed City Council on some activities taking place during the week.

**C. BUILDING SAFETY RECOGNITIONS**

City Manager Jackson recognized Ms. Marlene Frisbee in the Building Safety Department for her outstanding customer service as noted by Ms. Deborah Rogers with Davidson Homes.

Mr. Matt Holloway, President of Aspen Builders, explained his outstanding customer service he received from the following employees: Mark Case, David Souther, Ron Evans, Gary Stamey, Alec Arthur, Larry Davis, Sheila Salyer, Suzannah Carver, Kelly Heinz and Linda Kaye.

Mr. Robert Griffin, Director of the Building Safety Department, explained to Council his department's efforts in continually

reviewing their processes and procedures so they can become for effective and efficient.

Mayor Bellamy thanked Mr. Griffin for his leadership, especially going above and beyond with the project of the Health Adventure in the Montford area.

## **ADDITION TO THE AGENDA**

- At the request of Councilman Newman, the topic of a Personnel Committee was added as Item B under New Business.

## **II. CONSENT AGENDA:**

At the request of Councilman Mumpower, Consent Agenda Items "I" and "J" were removed from the Consent Agenda for discussion and/or individual votes.

### **A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 26, 2008**

### **B. RESOLUTION NO. 08-47 - RESOLUTION APPOINTING COUNCILMAN BROWNIE NEWMAN AS A MEMBER TO THE ASHEVILLE REGIONAL AIRPORT AUTHORITY**

Summary: Former Councilman Bryan Freeborn is no longer a member on City Council, and on January 15, 2008, it was the consensus of Council to appoint Councilman Brownie Newman to fill the unexpired term of former Councilman Freeborn as a member on the Asheville Regional Airport Authority until June 30, 2008, or until he ceases to be a member of City Council.

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### **C. RESOLUTION NO. 08-48 - RESOLUTION APPOINTING VICE-MAYOR JAN DAVIS AS A MEMBER TO THE CITIZENS/POLICE ADVISORY COMMITTEE**

Summary: Councilwoman Robin Cape has resigned as the ex-officio non-voting member of the Citizens-Police Advisory Committee. On January 15, 2008, it was the consensus of Council to appoint Vice-Mayor Jan Davis to serve as the ex-officio non-voting member according to the length of his Council term of office.

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### **D. RESOLUTION NO. 08-49 - RESOLUTION APPOINTING COUNCILMAN BILL RUSSELL AS A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD OF DIRECTORS**

Summary: Councilman Brownie Newman has resigned from the Metropolitan Sewerage District, and on January 15, 2008, it was the consensus of Council to appoint Councilman Bill Russell to fill the unexpired term of Councilman Newman until July 1, 2009.

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### **E. RESOLUTION NO. 08-50- RESOLUTION MODIFYING THE 2008 CITY COUNCIL MEETING SCHEDULE**

Summary: City Council worksessions will be held on the third Tuesday of each month at 5:00 p.m. in the Council Chamber, located on the 2nd Floor of the City Hall Building, Asheville, North Carolina.

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### **F. RESOLUTION NO. 08-51- RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY AT THE CORNER OF BAXTER STREET AND MARTIN LUTHER KING JR. DRIVE**

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property at the corner of Baxter Street and Martin Luther King Jr. Drive (PIN # 9649.19-60-6731).

A bid has been received from David Freck in the amount of \$18,000 for the purchase of land on the corner of Baxter Street and Martin Luther King Jr. Drive.

The land at the corner of Baxter Street and Martin Luther King Jr. Drive was acquired by the City as part of the East

End/Valley Street Community Improvement Program. It is a flag shaped lot comprising 0.15 acre+. The parcel has frontage on Martin Luther King Jr. Drive and is appropriate for sale as a residential lot with current zoning RS8. The bid from David Freck is in the amount of \$18,000. We have an appraisal on file prepared by Richard Smith dated December 17<sup>th</sup>, 2007 that estimates the fair market value of the property to be at \$18,000. Mr. Freck's bid is equal to the appraised fair market value.

Pros:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

Con:

- There is no negative impact.

The proceeds from the sale of this parcel will be Community Development Block Grant Program Income.

Economic Development staff recommends City Council approve a resolution authorizing the City Clerk to advertise an offer to purchase property at the corner of Baxter Street and Martin Luther King Jr. Drive (PIN # 9649.19-60-6731).

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**G. RESOLUTION NO. 08-52 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A FINAL CHANGE ORDER FOR HOBSON CONSTRUCTION COMPANY FOR THE HOMINY CREEK WATERLINE CROSSING PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to sign a final change order for Hobson Construction Company for the Hominy Creek Waterline Crossing Project, and the associated budget amendment in the amount of \$37,167.00.

Original bid was received and awarded to Hobson Construction Company. Previous amount of the project was \$384,299.99 to install a new 24-inch waterline under Hominy Creek at Brevard Road. During the installation of the new waterline, Hobson Construction encountered rock that would require blasting in order to proceed with the project. The N.C. Dept. of Transportation (NCDOT\_ would not allow blasting for this project due to the proximity of the I-40 and Brevard Road bridges, thus requiring the waterline to be moved outside the blasting zone. Hobson Construction would be required to install 840 additional linear feet of 24" ductile iron pipe, 40 additional linear feet of paving, and other associated costs for an additional cost of \$37,166.01. The total project cost is \$421,466.00.

These plans have been reviewed by McGill Associates, the engineer for the project, and McGill has recommended the change in project scope.

Pros:

- Will enhance water flow and pressure on Brevard Road from I-40 to I-26 including fire flow requirements for new commercial businesses along this corridor.
- Will enable future system looping to supply water to the western part of the Buncombe County.

Con:

- The additional cost was not programmed for this project. Funds are being reprogrammed primarily from two other capital project that came in under budget.

City staff recommends City Council approve a resolution authorizing the City Manager to sign a final change order for Hobson Construction Company for the Hominy Creek Waterline Crossing Project, and the associated budget amendment in the amount of \$37,167.00.

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**H. ORDINANCE NO. 3588- BUDGET AMENDMENT FOR THE HOMINY CREEK WATERLINE CROSSING PROJECT**

Summary: See Consent Agenda "G" above.

**ORDINANCE BOOK NO. 24 - PAGE**

**I. BUDGET AMENDMENT FOR A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES, DIVISION OF WATER QUALITY, FOR CONSTRUCTION OF A RAIN GARDEN AT RICHMOND HILL PARK**

This item was removed from the Consent Agenda for discussion and/or an individual vote.

**J. BUDGET AMENDMENT FOR A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES, DIVISION OF WATER QUALITY, FOR STREAM RESTORATION AND CONSTRUCTION OF STORM WATER WETLANDS AT REED CREEK**

This item was removed from the Consent Agenda for discussion and/or an individual vote.

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

Councilwoman Jones 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**

**I. ORDINANCE NO. 3589 - BUDGET AMENDMENT FOR A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES, DIVISION OF WATER QUALITY, FOR CONSTRUCTION OF A RAIN GARDEN AT RICHMOND HILL PARK**

Summary: The consideration of a budget amendment in the amount of \$55,000 for a grant from the North Carolina Department of Environment and Natural Resources, Division of Water Quality for construction of a rain garden at Richmond Hill Park.

Funds will be used in partnership with the North Carolina State University Water Quality Group for creating a rain garden at Richmond Hill Park to filter storm water from the existing parking lot. The rain garden is a Low Impact Development (LID) feature that will help return this formerly eight acre forested area of Richmond Hill Park to its predevelopment hydrology.

Pros:

- Strengthen the City of Asheville's commitment to water quality.
- Serve as public examples of the type of LID that the City has endorsed through its ordinances.
- Fulfill the full intention of the Richmond Hill Park master plan.

Con:

- None

The Parks and Recreation Department recommends City Council approve a budget amendment in the amount of \$55,000 for construction of a rain garden at Richmond Hill Park.

Councilman Mumpower said that his comments are directed at Consent Agenda Items I and J. He felt that if the City wants to do these nice projects, the City should pay for them. He felt the state government is neglecting their core responsibilities. Regarding the state's core responsibilities, they include the Court system, public safety (specifically drug interdiction), the mental health system and the State Bureau of Investigation crime lab. To be taking money from the State for nice things he felt, is a misinvestment of dollars.

Councilman Newman felt that for the people in Asheville who pay taxes to the state government and not receive anything in return would be an irresponsible approach. He felt Asheville residents should get something in return for their investment.

Councilman Newman moved for the adoption of Ordinance No. 3589. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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**J. ORDINANCE NO. 3590 - BUDGET AMENDMENT FOR A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND**

## **NATURAL RESOURCES, DIVISION OF WATER QUALITY, FOR STREAM RESTORATION AND CONSTRUCTION OF STORM WATER WETLANDS AT REED CREEK**

Summary: The consideration of a budget amendment in the amount of \$32,000 for a grant from the North Carolina Department of Environment and Natural Resources, Division of Water Quality for stream restoration and construction of storm water wetlands at Reed Creek.

Funds will be used in partnership with the North Carolina State University Water Quality Group for stream restoration and storm water wetlands along Reed Creek, a heavily impaired stream, which drains over 600 acres of downtown Asheville. The project will redirect stream flow to decrease stream bank erosion and construct storm water wetlands to create a new native plant riparian buffer.

### Pros:

- Strengthen the City of Asheville's commitment to water quality.
- Fulfill the full intention of the Reed Creek Greenway master plan.

### Con:

- None

The Parks and Recreation Department recommends City Council approve a budget amendment in the amount of \$32,000 to establish a budget for stream restoration and construction of storm water wetlands at Reed Creek.

Councilman Newman moved for the adoption of Ordinance No. 3590. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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

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

City Manager Jackson introduced Mr. Sherman Bass, the new Civic Center Director. Mr. Bass said that he looked forward to serving City Council and the citizens of Asheville in his new role.

Vice-Mayor Davis announced a reception being held to introduce Mr. Bass to the community on April 1, 2008, at 5:30 p.m. in the Banquet Room of the Civic Center.

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

#### **A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE ZONA VILLAGE PROJECT LOCATED ON BUXTON AVENUE FOR AN 11-STORY MIXED-USE BUILDING**

#### **ORDINANCE NO. 3591 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE ZONA VILLAGE PROJECT LOCATED ON BUXTON AVENUE FOR AN 11-STORY MIXED-USED BUILDING**

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

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

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:42 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 the Zona Village Project located on Buxton Avenue for an 11-story mixed-use building.

She said that the applicant is requesting review of site plans for a proposed residential condominium building with office/retail space on the first story. Pursuant to section 7-5-9(a) of the Unified Development Ordinance (UDO), any residential development of more than 50 units and any mixed-use structure with more than 45,000 square feet located within a half-mile of the Central Business District (CBD) shall be considered as a Level III project and a Conditional Use.

The project area is a 0.17 acre lot located on the north side of Buxton Avenue between Collier and South Lexington Avenues, zoned CBD (Attachment to City Exhibit 3 - Aerial Map). The applicant is proposing an 11-story structure (135') primarily comprised of residential condos (total square footage 62,375) (Attachment to City Exhibit 3 - Elevation drawings). There will be 54 condos as follows:

- 32 1-bedroom units, ranging in size from 632 – 791 square feet;
- 18 2-bedroom units, ranging in size from 903 – 1050 square feet;
- 4 3-bedroom units, ranging in size from 1200 – 1570 square feet.

There is approximately 3,000 square feet of office/retail space included on the ground floor:

- 2 office spaces at 670 and 915 square feet ( 1585 square feet total office);
- 2 retail spaces at 724 and 947 square feet ( 1671 square feet total retail).

Landscaping as proposed complies with City requirements and includes two street trees. The sidewalks are proposed to be widened to 8 feet, subject to approval by the City Traffic Engineer. The applicant intends to incorporate a streetscape plan along the entire northern side of Buxton Avenue, including widened sidewalks and street trees in bump-outs, which distinguish on-street parking areas. There is no off-street parking required or proposed (Attachments to City Exhibit 3 - Site Plan and Elevation drawings).

Off-site storage and staging area is proposed across Buxton Avenue at PIN 9648.06-37-7809, which is under the same ownership. Proposed Jib Crane location and swinging radius have been included in plans, and the applicant has been meeting with City staff on this issue to propose a construction plan that will be as safe and as minimally disruptive to the existing community as possible. A final plan will be part of the final Technical Review Committee (TRC) review process.

The project was approved by the Downtown Commission on November 9, 2007. During the review, the applicant indicated that this project will meet LEED criteria and will include elements such as an underground geothermal heating and cooling system, high efficiency insulation and lighting, bamboo flooring and rainwater harvesting for flushing toilets.

At their January 7, 2008, meeting, the TRC approved this project with the conditions as listed in their staff report. The proposal was unanimously approved by Planning & Zoning Commission (6-0) on February 6, 2008. Several Commissioners expressed positive comments regarding the sustainable features, praising the developer for proposing the first geothermal heating/cooling system for a multi-family development in the CBD.

Staff has received no communication from adjacent property owners or other citizens concerning the proposed development.

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

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

The project will meet State building code requirements and will be reviewed in detail by the TRC to ensure compliance with safety requirements.

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 site is an infill parcel in the south slope area of the Central Business District. The parcel is relatively flat.

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

The parcel for the proposed building is under-utilized. The new use is expected to act as a catalyst for further redevelopment of under utilized properties in the vicinity of the parcel. The project is expected to enhance the values of adjoining properties.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The proposed project is located in the Central Business District where there is no height, Density or maximum building size limitation. Nearby Zona Lofts, which was approved by City Council in August 2007, is to be 15 stories and although these buildings have not yet been built, this structure will be compatible with the emerging character of this neighborhood.

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 project conforms to the comprehensive plan and smart growth policies as this proposal is for higher density infill redevelopment in an area with existing supportive infrastructure in an underutilized part of the City. The project employs multiple green features for energy conservation that correspond to the City's dedication to environmentally-responsible development and supports the livability and vitality of downtown by offering housing at a workforce rate in close proximity to public transit and in a walkable urban location.

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

The project is located in the CBD in an area easily accessed for transportation, life and safety facilities and utility infrastructure.

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

The project is not expected to create traffic congestion or a traffic hazard. Mixed-use areas such as the CBD can reduce traffic concerns by encouraging people to walk more or use public transit.

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

#### Pros

- This project provides new development in an under-utilized are of the CBD and has the potential to be a "catalyst" for additional growth.
- The project integrates a number of green features and environmentally-sensible design practices.

#### Cons

- No off-street parking is proposed for this development, although not a requirement, but lack of parking may not satisfy the needs of the residents.

Staff recommends approval of the project inclusive of the following standard 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; and (5) This project will undergo final review by the TRC prior to issuance of any required permits.

Mr. Robin Pittman, representing the applicant, explained to Council that the project is in-fill redevelopment, is a 12-story

mid-rise building, contains mixed use (sensible mix of workforce and upscale housing), comprises of 54 residential units and has retail on the ground floor. The project will redevelop a targeted redevelopment area, contain affordable housing, will be close-in housing for hospital employees and has sustainable architecture. He then explained in detail the energy efficient design, noting the many green features the project would include.

After rebuttal, Mayor Bellamy closed the public hearing at 5:52 p.m.

When Councilwoman Cape questioned the developer's commitment to LEED certification, Mr. Pittman said that certifications are constantly changing and their commitment is that they want their project to be environmentally correct.

There was a brief discussion, initiated by Vice-Mayor Davis, about parking. Mr. Pittman said that he recognizes the need to have places for people to park because they can't sell the units if they don't have a convenient place for the people to park. They are now studying a structure which will contain 500 cars, which based on the present plan may be completed prior to the construction of Zona Village One.

Mayor Bellamy asked that as part of the developer's Master Plan process moving forward, if they could look at a lower price point to meet the City's affordable housing cap.

Councilwoman Cape encouraged the developer to participate in the City's downtown Master Plan process.

Councilman Newman moved to adopt Ordinance No. 3591 to grant a conditional use permit for the Zona Village located on Buxton Avenue, subject to the conditions recommend by City staff and the standard conditions as follows: (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 Mumpower and carried unanimously.

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

#### **B. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 34 AND 35 PINE LANE FOR THE PROJECT IDENTIFIED AS JIM BARKLEY TOYOTA, LOCATED AT 777 BREVARD ROAD FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT TO REGIONAL BUSINESS DISTRICT/CONDITIONAL ZONING**

#### **ORDINANCE NO. 3592 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY FOR THE PROJECT LOCATED AT 34 AND 35 PINE LANE IDENTIFIED AS JIM BARKLEY TOYOTA, LOCATED AT 777 BREVARD ROAD FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT TO REGIONAL BUSINESS DISTRICT/CONDITIONAL ZONING**

Mayor Bellamy opened the public hearing at 6:00 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to conditionally zone property located at 34 and 35 Pine Lane for the project identified as Jim Barkley Toyota from RS-8 Residential Single Family High Density District to Regional Business District/Conditional Zoning to be utilized for an additional storage area and overflow parking for the existing car dealership. This public hearing was advertised on February 29 and March 7, 2008.

She said that the subject property is .60 acres (two parcels) located at the end of a platted right-of-way and private gravel drive that tie into city-maintained Pine Lane. The properties are addressed as 34 and 35 Pine Lane. The property is zoned RS-8 and contains a vacant, dilapidated, single-family home on one parcel. Previously a single manufactured home was located beside this home. The parcel which contained the manufactured home is now covered with an asphalt parking area and some storage structures. Except for the dealership property to the south, these parcels are surrounded by property that is zoned RS-8 and is used for single-family residential purposes.

The applicant, Jim Barkley Toyota, initiated work (grading and paving) and use (storage and parking) of a portion of the property without required permits or proper zoning. This work was done in conjunction with the expansion of the dealership and came to the attention of staff during the review of the larger project. The applicants are now seeking a conditional rezoning to permit the use of the property as employee parking. The request is for the property to be rezoned from RS-8 (Residential Single-



Family High Density District) to RB/CZ (Regional Business Conditional Zoning). This parking area would connect with and be accessed through the adjoining dealership property. An extensive 30 foot buffer is proposed for all sides abutting residential property. It is proposed that 25 additional spaces for employee parking would be established through the creation of this parking area. They have committed to no additional lighting on the property.

At a meeting on January 7, 2008, the City of Asheville Technical Review Committee (TRC) reviewed the conditional zoning request and made a positive recommendation (with conditions) that the project be forwarded to the Planning and Zoning Commission. The developer has submitted a detailed landscape plan since that time.

At a meeting on February 6, 2008, the Asheville Planning and Zoning Commission reviewed the request. The Commission voted 5-1 to recommend the conditional zoning be approved with conditions suggested by staff and the added condition that access onto Pine Lane be prohibited from the driveway right-of-way. No one spoke in opposition to the project.

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

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

The project, if approved, must meet the technical standards set forth in the City's Unified Development Ordinance and Standards and Specifications Manual. All indications are that all standards can be met related to safety issues.

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.

There are no significant topographic or natural features on the site that make this condition an issue. The developer is proposing to grade and fill the site to level off the property for the parking area. There is now an approximately 20 foot differentiation in height from the eastern to western sides of the property.

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

The expansion of the automobile dealership under this development proposal, even if only for employee parking, would result in a commercial incursion into an established residential area which may diminish property values of the residences which surround the parcel. The developer is not adding lighting in this area and is providing a significant buffer which should mitigate the impact on the abutting properties.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The creation of additional employee parking for the automobile dealership is, of course, in harmony with the existing dealership of which it would become a part. It is not in harmony with the character of the residential area to the north which is comprised of single-family homes.

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.

This development proposal supports the Asheville City Development Plan 2025 depiction of the Brevard Road/I-26 interchange area as a regional node. The development does not support the Asheville City Development Plan 2025 in that it specifically calls for the strengthening and enhancing of neighborhood viability through the encouragement of compatible development that protects neighborhoods from inappropriate non-residential encroachment.

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 proposal would have little to no effect on transportation, water supply, police and fire protection, waste disposal, etc. as it is a very minor expansion to an existing development.

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

The proposed additional parking will not cause any traffic congestion or traffic hazard issues.

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

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Pros

- Large buffer that is proposed will be an asset to the adjoining residential properties.
- Provides needed parking for an established business.
- Parking lot lighting is not proposed for this addition, making it less intrusive to adjoining residential uses.

Cons

- Creates a commercial intrusion into an established residential area.
- Loss of housing stock.
- The request is contrary to the wishes of residents that were expressed during the Brevard Road corridor study.

Based on the above findings and the analysis provided in the report, staff found this request to be unreasonable. Staff recommended denial of this conditional zoning request due to compatibility issues and concerns about the incursion of commercial development into a residential area. The developer has proposed a nice vegetation plan and no additional lighting which will mitigate the impact. For these reasons and the fact that there is no neighborhood opposition, the Planning and Zoning Commission recommended this rezoning to you (5-1). They added the condition that access onto Pine Lane be prohibited from the driveway right-of-way.

Mr. Gary Rowe, representing Jim Barkley Toyota, explained that Mr. Barkley was lead to believe that he could do the development and when he was advised that he was in violation, he stopped and applied for a conditional use permit. He explained that the area will be solely used as employee parking and not storage. He said that the address is on Pine Lane; however, the property does not front on Pine Lane and they will not use Pine Lane at all for access to this property, as it will be buffered. Access to the lot will only be from the dealership. He said that the buffering will be far better than what is on the property now and the area will be more attractive. He acknowledged the intrusion in to the residential property; however, he felt it will not be offensive. He urged Council to support the conditional zoning request.

Mayor Bellamy closed the public hearing at 6:07 p.m.

Ms. Cogburn responded to Councilwoman Cape's concern about notification of adjoining property owners and the Brevard Road Corridor Study results.

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

Councilman Mumpower moved to adopt Ordinance No. 3592 to conditionally rezone 34 and 35 Pine Lane from RS-8 Residential Single-Family High Density District to Regional Business District/Conditional Zoning, subject to the following conditions: (1) Access onto Pine Lane be prohibited from the property; (2) the area may only be used for parking (no storage allowed); (3) The project shall comply with all conditions outlined in the TRC staff report; (4) 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; (5) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (6) 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 (7) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilwoman Cape voting "no."

**ORDINANCE BOOK NO. 24 - PAGE**

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- C. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 3 SPRINGSIDE ROAD FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT/ CONDITIONAL ZONING FOR AN OFFICE/LIGHT COMMERCIAL BUILDING**

**ORDINANCE NO. 3593 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 3 SPRINGSIDE ROAD FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT/ CONDITIONAL ZONING FOR AN OFFICE/LIGHT COMMERCIAL BUILDING**

Mayor Bellamy opened the public hearing at 6:09 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to conditionally zone property located at 3 Springside Road from RS-8 Residential Single Family High Density District to Community Business I District/ Conditional Zoning for an office/light commercial building. The project is also seeking modifications of the property line buffer requirements. This public hearing was advertised on February 29 and March 7, 2008.

Urban Planner Alan Glines oriented the Commission to the site location and said the conditional zoning proposal for 3 Springside Road is seeking the redevelopment of a single parcel and removal of a single family home for an office use.

The subject property is one parcel west of Hendersonville Road in the Skyland area. The existing zoning for the parcel is RS-8 and the request is to rezone to CB I/CZ. The proposed plan for the site provides a single 1,050 square foot structure and 5 parking spaces on the .15 acre site. The existing single family home and garage will be removed. The property is burdened with a sewer line easement along the eastern side of the parcel. Surrounding the property is a gas station and other commercial uses on the properties fronting along Hendersonville Road and a mobile home park to the west and south. The transition from a single family use could be looked at as a gradual change for properties in close proximity to a busy commercial corridor. The mobile home park is a non-conforming grandfathered use for the RS-8 zoning classification and pre-dates the zoning in place for the area. These existing surrounding uses make single family residential living less attractive for this site. The site is constrained because of the sewer line that crosses under the existing home. The Unified Development Ordinance (UDO) will require a property line buffer along the RS-8 property line (the mobile home park) but because of the constraints of the site, the developer is seeking a modification from a 'B' buffer (30 feet) width from City Council. The plan will provide a minimum of a 10 foot wide buffer and increasing for most of the length to be 20 feet wide. The normal quantity of plant materials required with a 30 foot buffer will be located to other areas around the site. The building is designed appropriately for the limitation of the site (at 1,150 square feet) and with the proposed driveway space and parking should improve the property.

Commercial zoning requires a property line buffer when adjacent to residentially zoned property as noted in the UDO. A property line buffer will be required along the west side of the property and street trees will also be required along Springside Road.

A 30 foot wide 'B' buffer is required along the west property line adjacent to the mobile home park. Because of the constraints on the site from the sewer line easement, the developer is seeking a modification from the buffer width from City Council for this property line buffer. Even with the buffer reduction, a planted area with a minimum width of 10 feet and increasing for most of the length to be 20 feet wide will be provided. The normal quantity of plant materials required with a 30 foot buffer will be located to other areas around the site.

The Community Business I (CB I) is established to provide areas for medium-density business and service uses serving several residential neighborhoods that are commonly found and needed in a neighborhood environment. This district may serve as a workplace for many residents in the surrounding neighborhood and should be sensitive to a significant pedestrian population and also provide for safe vehicular access. The specific use is not identified in this application but it will be one from the list of the uses permitted in the CB I district.

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

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

The proposal has been reviewed by the Technical Review Committee and will comply with technical requirements to ensure 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 plan is compatible with features of the site and will keep development off of the sewer line easement

crossing the property. A landscape buffer will be added to minimize any potential land use conflicts.

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

The modest proposal is not expected to injure the value of adjoining or abutting property.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The scale of the development and design for the site is compatible with the scale of the neighborhood and the lot size and other constraints of the lot. The commercial building proposed will be 1,150 square feet which is in harmony with the scale of commercial structures that border the property.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

The comprehensive plan recognizes the gradual trend to redevelop underused properties to other more intense development especially along transportation corridors and other growth corridors. The request is reasonable based on the location of the parcel and the limited intensity of the proposed development.

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

The subject property is located in close proximity to Hendersonville Road and is appropriately located with respect to public infrastructure since it is one parcel west of Hendersonville Road. Transit route 6 passes nearby along Hendersonville Road.

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

The proposal is limited in scale and is not expected to create a traffic hazard or cause undue traffic congestion. A traffic impact analysis was not required for this proposal.

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

#### Pros

- An underutilized property will be redeveloped
- The proposal is in scale with the site and will limit land disturbance
- The scale of the development is compatible with surrounding development

#### Con

- Results in a loss of an affordable or workforce housing unit

This conditional rezoning request was recommended for approval by a 5-1 vote by the Planning and Zoning Commission. Only the agent for the owner spoke at the Planning & Zoning Commission meeting.

Staff recommends approval of the conditional zoning to CB-1 and the Master Plan for 3 Springside Road along with the landscape buffer modification and subject to the following standard 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 full cut-off fixtures and directed away from adjoining properties and streets; (3) The building orientation on site must comply with the conceptual site plan presented with this application. Any deviation from the plan may result in reconsideration of the project by the reviewing boards; and (4) This project will undergo final review by the TRC prior to issuance of any required permits.

Mr. Gerald Green, representing the developer, cited several reasons why this is a difficult site, e.g., the small size, the MSD sewer and the present house location. He felt there will be minimal impact on the surrounding area and it will be a good transition from the more intense commercial development to the east to the residential uses to the west of the site. They are

committed to planting all the plant material and asked for the Commission's support in granting their modification request.

Mayor Bellamy closed the public hearing at 6:14 p.m.

Mr. Glines responded to Councilman Mumpower's question regarding staff's support of the buffer modification.

Councilwoman Cape was concerned by the commercial intrusion into the neighborhood, especially since there are many commercial properties on Hendersonville Road that are vacant. She also expressed concern of the vagueness of the type of business that would be located on the property and its usefulness to the neighborhood.

Mayor Bellamy expressed concern about the landscaping close to the street (so as not to impede the view of people exiting the site). Mr. Glines said that the developer will have to meet the site triangle requirements in the UDO to protect the site distance. In addition, responding to Mayor Bellamy, Mr. Glines noted that the easement for the sidewalk will be part of the final TRC review.

Mayor Bellamy asked that the developer provide adequate shielding the mechanical parts of the building from the residential neighborhood.

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

Councilman Mumpower moved for the adoption of Ordinance No. 3593 to conditionally rezone 3 Springside Road from RS-8 Residential Single Family High Density District to Community Business I District/Conditional Zoning, with the modification from a 'B' buffer (30 feet) width, and subject to the following standard 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; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Councilwoman Cape voting "no."

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

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

#### **A. RESOLUTION NO. 08-53 - RESOLUTION AMENDING THE CITY'S 2007-08 CONSOLIDATED ACTION PLAN**

Mayor Bellamy said that this item has been continued from the February 26, 2008, meeting, at which time City Council instructed staff to contact other organizations who have experience in administering Community Development Block Grant (CDBG) grants to see if they would be interested in carrying out this program.

Community Development Director Charlotte Caplan said that this is further consideration of a proposal to amend the 2007 Consolidated Action Plan to re-allocate a \$10,000 CDBG grant for community organizing in the Weed and Seed area to the Coalition of Asheville Neighborhoods (CAN).

At the Council meeting on February 26, 2008, this item was tabled for further discussion. Staff was asked to contact other organizations who have experience in administering CDBG grants to see if they would be interested in carrying out this program.

To date, staff has contacted six local non-profit agencies to gauge their level of interest in submitting an application to take over the grant and operate the proposed program. All the agencies acknowledged that the program was worth supporting and expressed confidence in the skills of community organizer Barbara Verni-Lau. However five of the agencies stated that they would not be interested in submitting an application, for reasons including: "outside our core mission" and "over-extended in Asheville programs at this time". One agency expressed some interest, but felt it would be feasible only if they could identify additional grant sources in order to sustain a new staff position. Agencies also expressed concerns about applying to take over a program already proposed by another agency.

The following four options are available:

1. Award the grant to the Coalition of Asheville Neighborhoods.

Pro: In line with the recommendation from the Housing & Community Development Committee; CAN proposes financial

leverage in the form of a foundation grant (not committed but likely).

Con: There are valid concerns about CAN's ability to sustain the program in the longer term because of the agency's limited financial and staff resources.

2. Request applications from other agencies to operate the program.

Pro: Provides an opportunity to bring this program under the direction of an experienced non-profit agency with the capacity to attract leverage.

Con: Not clear whether any applications would in fact be submitted; would significantly delay program implementation;

3. Allocate the funds to the City's Parks & Recreation Department to contract for services directly with the community organizer.

Pro: Would be quick to implement and ensure maximum coordination with the City's Weed & seed program;

Con: Opportunity to leverage the funds with other grants or donations would be lost.

4. Cancel the program and reallocate the funds as part of the 2008-09 Action Plan.

Pro: Increases funding available for other CDBG grant applications currently being considered by the HCD Committee.

Con: Opportunity to continue the work of a skilled community organizer in the Weed & Seed area would be lost.

Staff recommends that Council first decide whether or not to approve the application from CAN, on its merits. If not, then the other three options should be considered. On balance, staff recommends Option 3 (for the City to contract for services directly with the community organizer).

Councilman Mumpower moved to allocate the funds to the City's Parks and Recreation Department to contract for services directly with the community organizer. This motion was seconded by Councilman Russell.

In response to Councilwoman Jones, Parks & Recreation Director Roderick Simmons said that he felt they can house the program within the existing operations. He said the leverage we lose would be the ability to go out and raise money from the community.

In response to Councilman Newman, Ms. Caplan said that CAN was very confident that the Z. Smith Reynolds Foundation funds (\$6,000) would be reassigned to them if they were able to take the program over. They were also confident they could get another grant for next year. However, she felt it was unlikely that the Foundation would reassign the \$6,000 to the City.

Mayor Bellamy felt that a creative way to accomplish means would be for the City to contract with the community organizer (Ms. Verni-Lau) and in her contract spell out the City's expectations for the \$10,000. In addition, Ms. Verni-Lau could also contract with CAN (using the Z. Smith Reynolds grant) spelling out how she will use the \$6,000 for other things not included in the City's contract. She didn't think that if Ms. Verni-Lau contracts with the City that it prohibits her from contracting with another agency on different goals.

Councilman Newman was concerned about structuring the program the way Mayor Bellamy suggested. He did feel like this is a new role for CAN, but is consistent with their mission.

Councilman Mumpower felt that CAN has historically been a political entity and an advocacy organization with strong political positions. He felt CAN has no history of being involved in service delivery or management of other people's dollars.

Mr. Joe Minicozzi, President of CAN, explained that CAN was formed about 20 years ago as a 501 (c) (3) organization. They are not a political action committee. He pointed out that one of their objectives from their Charter reads "to provide technical assistance to neighborhood groups and individuals and participating in community affairs." We found this part of our mission with this opportunity with the low income coordinator. During the 20 years, during which time they did manage their budgets, they maintained several staff members through administered grants. He explained how they would, given the opportunity, administer the City's \$10,000 grant and his concerns about having two separate grants - creating duplicate management.

Councilwoman Jones' goal is to get the community organizer into the neighborhood and she explained why she felt CAN is the appropriate organization to achieve that goal.

Councilwoman Cape felt that we have a great neighborhood outreach organization who wants to move into another level of responsibility and would support the grant being awarded to CAN, a group of citizens who are taking a responsibility for their own neighborhoods.

In response to Councilman Mumpower, Councilwoman Jones felt that it might be good to have a worksession in about 8

weeks on the roles that non-profits play in the community.

The motion made by Councilman Mumpower and seconded by Councilman Russell carried on a 4-3 vote, with Councilwoman Cape, Councilwoman Jones and Councilman Newman voting "no."

## RESOLUTION BOOK NO. 31 - PAGE

### VI. NEW BUSINESS:

#### **A. ORDINANCE NO. 3594- ORDINANCE GRANTING A FRANCHISE TO OPERATE A PEDAL BICYCLE TAXI SERVICE WITHIN THE CITY OF ASHEVILLE**

Director of Transportation and Engineering Cathy Ball said that this is the consideration of an ordinance granting a franchise to operate a pedal bicycle taxi service within the City of Asheville.

Your Chariot Awaits, LLC wants to operate a pedal bicycle taxi service limited to a maximum of five Pedicab vehicles (3 minute stops) within the Central Business District, the River Arts District, and the Historic Montford District. The hours of operation are restricted to not allow the pedal bicycle taxi service to operate during the morning and afternoon weekday commuting peak periods. In addition, the pedal bicycle taxi service is prohibited from operating on public streets where the speed limit is 35 mph or higher (*the statutory speed limit within the City of Asheville is 35 mph*).

Generally, cities grant franchises to certain services which use city streets, rights-of-way, or other city controlled assets in order to exert a measure of control over the specific services to assure public health, safety, and welfare. The City of Asheville is restricting the pedal bicycle taxi service to certain city-maintained streets in order to minimize negative impacts to orderly and efficient traffic flow.

The hours of operation shall be limited to between 9:00 am to 4:00 pm and between 6:00 pm to 3:00 am Monday through Friday and between 7:00 am to 3:00 am Saturday and Sunday. For City recognized holidays and days on which City-approved festivals occur in the Central Business District, the operating hours may be extended to 3:00 am regardless of the day of the week. The pedicabs are prohibited from operating in any City approved festival or event area where the roadways are blocked including but not limited to the Bele Chere festival except with written permission from the event organizer.

Your Chariot Awaits, LLC shall only use the "Classic Pedicab" based model manufactured by Main Street Pedicab's Inc. All pedicabs shall be of single frame construction, have operable brakes on the front and back wheels, have seat belts for passengers, and be designated as a slow moving vehicle with a reflective sign on the back. An electric assisted motor no greater than 750 watts and one horsepower may be installed on each pedicab.

#### Pros:

- Enables the City of Asheville to control the impacts of a pedal bicycle taxi service on the transportation infrastructure.
- Enhances and promotes the tourist industry.
- Exposes tourists to downtown Asheville, the River Arts District, and the Historic Montford District.

#### Con:

- Could impede traffic flow because of frequent stops (*minimal delay*).

Staff recommends that City Council approve an ordinance granting a franchise to operate a pedal taxi service within the City of Asheville.

When Councilman Mumpower expressed concern about impeding traffic flow, Ms. Ball responded that 12 mph (speed potential of the vehicles) on a 20 mph street was acceptable. She felt the benefits outweigh the risks and they will work with the owner to address concerns raised, if any.

Ms. Ball and Ms. Felicity Herman, owner of Your Chariot Awaits, LLC, responded to various questions/comments from Council, some being, but are not limited to: what communities did City staff survey regarding the safety and traffic flow of this type of service; where will the central location be to house the vehicles and how secure will the facility be; what is the City's ability to terminate the franchise should the vehicles be determined to impede traffic flow; what is the classic Pedicab body size; why is the service being requested to operate until 3 am when the trolleys end at Midnight; and request to make sure the insurance requirements to ensure the safety of the passengers is written into the franchise ordinance.

When Mayor Bellamy asked if the service would provide amplification, Ms. Herman said that she had not thought of that,

but would be interested in receiving information on that aspect.

Mayor Bellamy supported Ms. Herman's entrepreneur spirit and wished her much success.

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

Councilman Mumpower moved for the adoption of Ordinance No. 3594. This motion was seconded by Councilman Russell and carried unanimously.

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

### **B. FEDERAL LEGISLATIVE AGENDA**

Economic Development Director Sam Powers said that City Council is being provided information concerning three requests that have been received by staff concerning federal issues. He asked for City Council to review the following three requests:

- City staff has been contacted by a non profit group Go21-Transportation Options for the 21<sup>st</sup> Century ([www.go21.org](http://www.go21.org)), asking City Council to consider taking a position on two pending bills related to regulation of the railroad industry.
- The City County Bureau of Identification is seeking federal support to purchase an Automatic Fingerprint Identification System, two Live Scan Fingerprint systems, and the software for facial recognition. CCBI is a joint venture between the City of Asheville and Buncombe County. City Council may wish to consider expressing support for this initiative.
- ERC Broadband is seeking federal support to provide an enhanced level of fiber optic connectivity in Western North Carolina. The City of Asheville has relied on fiber optic connectivity for police and fire substations throughout the City. Additionally, as City services expand, so does the need for heightened levels of business continuity and disaster recovery. Increased broadband also increases the potential for growth in technology-based businesses in our area. City Council may wish to consider expressing support for this initiative.

Mayor Bellamy provided Council with copies of her federal legislative issues, in which she requested Council's support. She said if Council wished for more time to consider these items, she would be happy to grant that time, but will continue to work on these issues with other partners across our State:

- Senate Bill 1738 "Combating Child Exploitation Act of 2007" to improve the Internet Crimes Against Children Task Force to increase resources for regional computer forensic labs, and to make other improvements to increase the ability of law enforcement agencies to investigate and prosecute predators.
- HR 1692 "The Fighting Gangs and Empowering Youth Act of 2007" which contains many things that focus on making sure that our youth have alternatives from gangs as well as increase penalties for gang activity.
- Senate Bill 1745 "Departments of Commerce and Justice, Science, and Related Agencies Appropriations Act, 2008" for support of our Weed and Seed program that is funded under this Act.
- "The Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2003" (1) Sec. 9002 - extension of the highway-related taxes and trust fund; (2) Sec. 9003 - extension of tax benefits for alcohol fuels; (3) Sec. 9004 - private activity bonds for surface transportation infrastructure; and (4) Sec. 9005 - all alcohol fuel taxes transferred to highway trust fund.
- PL 110-140 "The Clean Energy Act of 2007" (HR 6) to reduce our Nation's dependency on foreign oil by investing in clean, renewable, and alternative energy resources, promoting new emerging energy technologies, developing greater efficiency, and creating a Strategic Energy Efficiency and Renewables Reserve to invest in alternative energy.

In response to Councilwoman Cape's request for a short period of time to review various requests, Mayor Bellamy said the federal legislative agenda will be discussed at the April 8, 2008, Council meeting.

The following are Councilwoman Cape's requested legislative agenda items, noting that she would insert house and bill references prior to the matter coming before Council again:

- Urge state and federal government to enact policies and programs to meet or beat the greenhouse gas emissions (ghg)



reduction targets for the US of 80% reduction by the year 2050.

- Urge US Congress to pass the bipartisan ghg reduction legislation which would establish a national emission trading system.
- Support to fund the expansion of the ERC broadband and fiber optic network in the region for education, medical and emergency service support.
- Lend support to the Land of Sky Council of Government request for funding for a Comprehensive Economic Development Strategy - Regional Growth Management Planning Initiative for Western North Carolina.

Councilman Newman supported Councilwoman Cape's first issue regarding greenhouse gas emissions as those are targets that have to be met to make the appropriate impact.

Councilman Mumpower felt that when we have a national debt of 10 Trillion dollars, everything mentioned will have to come from borrowed monies that our grandchildren will have to pay for and he would not be supportive of any of the requests, not on the basis of merit, but on the basis of borrowed dollars. He would be interested in the following areas (1) continued assured participation from the federal government in the completion of the I-26 Corridor; (2) continuation and expansion of the federal involvement in local drug interdiction, specifically since we are a regional distribution and trafficking center; and (3) credible enforcement in the Asheville area of the illegal immigration law.

Mayor Bellamy asked that Council members provide their items to City Clerk Lipe prior to the established deadline (which will be provided to Council by City Clerk Lipe) in order that the issue can again be discussed on April 8, 2008.

City Attorney Oast said that he is working on the state legislative agenda. He said it is a Short Session this year, but if any Council member has information they would like to be considered to get that information to him. He will provide information to Council at the March 18, 2008, worksession. He anticipates that Council will have a worksession discussion regarding the state legislative agenda at the April 15, 2008, worksession.

Mr. Powers noted that Congressman Shuler's Office has asked for City Council to prioritize the following funding projects: Reid Center, energy conservation retrofits for City buildings, traffic signal preemption, regional public safety training facility and bus replacement.

## **VII. OTHER BUSINESS:**

### **A. TOWING ORDINANCE DISCUSSION**

City Attorney Oast provided Council with our current ordinance which essentially requires the posting of notices in parking lots in the downtown and Biltmore Village areas. It basically describes the size and content of the sign. If you are the owner of a private lot and you don't wish for people to park on that lot, you need to post the signs. It doesn't mean that if you don't post the signs, that you can't have vehicles towed from there, but you are more subject to a fine if you do. This ordinance was adopted pursuant to a special state law to address predatory towing. It's a problem all over the state and nationally. The problem is when you own a lot in the downtown and someone leases a space from you, if someone from out of town parks there, it's an inconvenience to you as the lessor of that space. That does not mean it's not an inconvenience for the person who parked there to have to retrieve their car. He believes the only thing we can do, under the law, is to require the conspicuous posting of those lots, which we do. He didn't know how much follow-up has been done since 2003, but it seems like the number of complaints since 2003 have gone down. We have looked into what has been done in other cities, and some other cities do have requirements like requiring release of a car, if the person whose vehicle is being towed, encounters the tower in the lot where it's being towed from; or requiring notification by the tow operator to the police within 1/2 hour or some time period before towing the vehicle. The ability to regulate any aspect of towing is limited largely by federal law which exempts businesses engaged in commerce carriers or interstate commerce for certain types of state and local regulations. The law was amended in 1995 to allow states to undertake certain types of safety regulations. The State has not delegated that authority to Asheville, except in some of the limited forms in which we have special legislation. We have certain limitations that restrict our ability to regulate this practice. There are competing interests and when the issue came up in 2003 we heard from the people who operate private lots downtown and people who lease these spaces. We have done as much as other cities have done to educate the public and the visiting public about when it's okay to park someplace and when it's not. There are some other things we could do and have done in the past, such as producing a pamphlet explaining the situation and having that distributed to local hotels and motels.

In response to Vice-Mayor Davis, City Attorney Oast said that one of the things that federal law allows states and political subdivisions do is to regulate the price that is charged for these events. Our ability as a municipality in North Carolina is somewhat limited because the state has not given that authority to us, anymore than they have given us the authority to regulate what people

can charge for products that they sell. Some cities do regulate the price with no more authority than we have. Some cities have gotten creative in the kinds of regulations that they do prescribe and they mostly relate to timing, the amount you can charge for a non-consensual tow, the amount you can charge for a storage fee and when that storage fee begins to accrue. He believed that the City of Raleigh has regulated that practice. He did not know if Raleigh has local authority to do that or not, but he didn't think they do. He thinks they have taken this exemption to the federal law and under the umbrella of a safety regulation, and has adopted those kinds of price regulations. He's not sure if their ordinance has ever been challenged in court, however. In view of the heavy regulation of this area by federal law and the limited exemptions for regulation by states and municipalities, he is more comfortable with having specific authority to do what we do. He suggested Council request some increased ability to regulate non-consensual towing from our state legislators.

Vice-Mayor Davis acknowledged Asheville's very limited amount of power regarding predatory towing. He wondered if the community (including the Downtown Association) should take the lead and determine what role the community can play, especially since the City has such limited authority. He also supported asking our state legislators for more control.

Councilman Mumpower believed that the City has the ability to find a point of balance through regulatory action, not community action. He advocated seeking specific regulatory authority (1) to increase the penalties for abuse by the towing companies; (2) regarding storage fees and when they begin. He felt the signs (1) need additional detailed information; (2) larger signs; and (3) larger lettering. Since we can regulate the behavior of taxicab drivers, he wondered if some of the provisions in our taxicab ordinance might be applied to predatory towers. He questioned on-site immobilization and other options before vehicles are towed.

In response to Councilman Mumpower, City Manager Jackson said that the City responds to any report of predatory towing and do an inspection on site. On some occasions we do find that the sign does not meet the Code requirements and we do take action to cite those and enforce the penalties provided by law. We do that on a complaint basis. At this time we don't have a proactive program of periodic inventorying the signs and evaluating them.

Councilwoman Jones supported asking our state legislators for the increased ability to regulate non-consensual towing.

In response to Councilwoman Jones, City Attorney Oast said that oversight of the towing industry is probably regulated in the Attorney General's Office or in the Consumer Protection Division. He said that he would find out what happens after a complaint is received by those agencies.

Upon suggestion of Councilwoman Cape, City Attorney Oast said that the City presently has the authority to put the name of the business (who owns the lot) on the sign.

Councilwoman Cape suggested the following be included in the request for increased regulation: ability to require hours of operation, accepted payment method, access to personal property, and for the ability to develop a certification list of wreckers within our community. She also supported the idea of utilizing our ability to have economic incentives and partner with some business lots downtown after hours. She also supported the idea of an economic development incentive package to some of the business parking lots downtown who would allow parking in the off-hours in their lots.

Councilman Newman supported the suggestions presented and in terms of looking at ways to create more parking downtown, he suggested Council look at leasing private lots that are not used during certain times of the day. City Attorney Oast said the he believed the City of Raleigh uses that vehicle.

Upon inquiry of Mayor Bellamy, City Attorney Oast said that he would report back to Council at their worksession on April 15, 2008.

## **B. PERSONNEL COMMITTEE**

Councilman Newman said that he believes Council is at the point of where our City Council needs more than an ad hoc Personnel Committee as we move forward. He believed that Council needs to address the following questions (1) should City Council create a standing Personnel Committee; (2) who does City Council want to serve on this committee; (3) what is the charge of this committee; and (4) who does City Council want to lead this committee.

He proposed "the creation of a standing Personnel Committee for 2008-09. The charge of the Personnel Committee is to provide leadership and guidance for the City Council on matters related to personnel issues. The Personnel Committee will be responsible for leading the annual review of the three employees who, by our Charter, report to City Council: the City Manager, the City Attorney and the City Clerk. The Personnel Committee will help lead the process for filling any vacancies in these positions.

The Personnel Committee will be comprised of four members, appointed by City Council. The Personnel Committee will have a Chair, appointed by City Council.

The Personnel Committee will be available, as needed, to address any concerns of the City Manager, City Attorney or City Clerk. If the staff of the City Council has concerns or ideas related to their work for City Council, they will be encouraged to consult with the Personnel Committee. If members of City Council have concerns or ideas related to personnel, they will also be encouraged to take them up with the Personnel Committee for initial consideration.

The Personnel Committee will have no direct decision making authority. It will serve in an advisory capacity for City Council. The Committee will meet as needed."

Councilman Newman felt Council would be well served by a Personnel Committee and proposed the Committee be comprised of Mayor Bellamy, Councilman Mumpower, Councilman Russell and Councilwoman Jones. Based on his outstanding professional experience in human resources, he supported the appointment of Councilman Russell to Chair the Personnel Committee.

Councilman Mumpower felt we are trying to fix a problem that doesn't exist. He felt the ad hoc committee of Councilman Russell, Mayor Bellamy and himself to address the very limited personnel responsibilities of the Council is more than adequate to the task. He felt that the Mayor has very limited authority and control in Asheville, but this is an area where the Mayor's leadership is appropriate to the task. In addition, Council has the ability to challenge the Mayor if they have concerns. He would support leaving the ad hoc committee as it currently exists and if it is formalized, he would ask not to be a member.

Councilman Newman moved to create a standing Personnel Committee, whose charge is outlined above, and in light of Councilman Mumpower not being interested in serving, that the Personnel Committee be comprised of three Council members. This motion was seconded by Councilwoman Jones.

Vice-Mayor Davis felt that City Council is a personnel committee that has three employees to supervise. The ad hoc committee (which he was a member of for two years) made sure that there was a regular evaluation of our three employees and if an issue arose about hiring an employee they acted on that. Anything of real gravity was brought to the entire Council. He supported the ad hoc committee structure to remain as is.

Councilman Russell felt that after the replacement of the City Clerk, the Committee should look at whether they need to even continue meeting. He felt that when you have seven people who can make decisions on staffing, it needs to be done as a body. He did, however, like to have the funnel for their three employees.

Councilman Newman explained the difference between an ad hoc committee and a standing committee.

Mayor Bellamy was not supportive of the proposal as originally presented. The proposal would be the first time the City adopted a resolution supporting four members of Council to a committee - which is legally the majority of the Council. The proposal with 4 members of Council would allow a decision to be made that could have an impact on the 3 individuals that the City Council has oversight over. There is no reason for a formalized personnel committee. The ad hoc personnel committee started when she became Mayor. The personnel committee met three times last year to address reviews and evaluations. She said the personnel committee is in existence because she brought it to Council's attention that their 3 employees had not been reviewed on an annual basis. She asked Council to allow 2 members of Council to serve with her to make sure that their evaluations were done on a consistent annual basis. Our City Attorney went 4-5 years without adequate review. Her goal was only to make sure that our staff had proper oversight and the proper opportunity to be reviewed by their supervisors. There is an existing ad hoc personnel committee and she didn't feel it needed to be a standing committee. The Mayor has always been the lead on personnel issues, except for one time - when 4 members of Council fired a City Manager and they hired a new City Manager. She didn't understand why the structure is changing now.

The motion made by Councilman Newman and seconded by Councilwoman Jones carried on a 4-3 vote, with Mayor Bellamy, Vice-Mayor Davis and Councilman Mumpower voting "no."

Councilman Newman moved to appoint Mayor Bellamy, Councilman Russell and Councilwoman Jones to the Personnel Committee, with Councilman Russell as Chair. This motion was seconded by Councilwoman Jones.

Mayor Bellamy reiterated that the Mayor has been the lead on personnel issues. She was the lead on hiring City Clerk Lipe and was discouraged that her role has changed without any true articulation on why.

Councilwoman Jones supported Councilman Russell as Chair in that he has 15 years experience in human resources.

Mayor Bellamy noted that she has sat on interview panels and decision-making panels for other organizations outside City government. She is also on the state-wide panel for a replacement of the Executive Director for the North Carolina Metro Coalition of Mayors. In addition, she has 10 years of human resources experience and also has experience in hiring a government employee.

Councilwoman Cape said that the Mayor, unlike the rest of Council who don't have offices in City Hall, has the most direct contact with people on a daily basis and that is a particular relationship that probably creates more engagement on a continuous basis with the 3 people that Council hires. Staff is working with the Mayor all the time, but in terms of checks and balances, she felt those 3 people need the option to talk to people who are not in the office all the time and get their feedback and prospective on things. She would have to support Councilman Russell as Chair.

Mayor Bellamy felt Councilwoman Cape's argument may hold water if she wasn't actually still a member of the committee, but she is still a member - just removed as the chair. Any number of employees have the right to go to any Council member and express their concerns.

Councilman Russell believes he can serve as Chair in a neutral way and explained this is not personal, but practical.

When Councilman Russell expressed concern that there have been about 4 personnel changes within a very small corner of the building, Councilman Mumpower responded that none of those positions involve the 3 people City Council is responsible for - those changes are under the authority of the City Manager. Mayor Bellamy also noted that Maggie Burleson retired, City Clerk Lipe is moving to another department, Janet Rhodes retired, Nancy Farmer's position was on a rotational basis, Phyllis Corns moved to another department, Marcia Strickland is the new Neighborhood Coordinator, Lauren Bradley was promoted to Assistant to the City Manager, and Laurie Saxton is now the Public Information Officer.

The motion made by Councilman Newman and seconded by Councilwoman Jones carried on a 4-3 vote, with Mayor Bellamy, Vice-Mayor Davis and Councilman Mumpower voting "no."

#### **C. BOARD & COMMISSION VACANCIES**

Vice-Mayor Davis announced vacancies on the Citizens-Police Advisory Committee (a west representative), the Asheville-Buncombe Historic Resources Commission, the Recreation Board, and the River District Design Review Committee. He urged the public to submit their applications by Thursday, April 10, 2008.

#### **D. UNC-ASHEVILLE MEN'S BASKETBALL**

Vice-Mayor Davis recognized UNC-Asheville's Men's Basketball Team that had one of their best seasons ever. He also urged the public to attend the Women's Big South Conference.

#### **E. CLAIMS**

The following claims were received by the City of Asheville during the period of February 1-21, 2008: Junay Hickey (Police), Heritage Kitchens (Fire), Cici Weston (Water), Timothy Chapman (Police), Doris-Marie C. Martin (Water), Margaret Whiteside (Fire) and Antonio Cruz (Police). These claims have been referred to Asheville Claims Corporation for investigation.

#### **F. LAWSUIT**

The City was served with a Complaint on February 8, 2008, which is generally described as follows: Asheville Jet Inc. d/b/a MillionAir v. City of Asheville, Asheville Regional Airport Authority, and the County of Buncombe. The nature of the proceeding is for breach of contract; monetary damages; declaratory judgment; and injunctive relief regarding a lease between the Airport Authority and Encore. The Airport Authority insurance coverage may provide a defense on this. That coverage may extend to the City as well. We are investigating this and a determination should be made soon.

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

Ms. Donna Bateman thanked Council for their work in Pritchard Park. She requested a close parking place be given to the Park Warden, along with lighting and heat in her office area.

Mr. Reid Thompson asked how the Greenlife Grocery Store (which states on their 2003 incomplete application form is 20,412 square feet) can be legally permitted without a sprinkler system, since any structure over 12,000 square feet that gets

rehabbed in the State of North Carolina is required to have a sprinkler system. Mayor Bellamy asked that City Attorney Oast respond in writing to Mr. Thompson's concern with a copy to City Council.

Mayor Bellamy read the following staff periodic up-date dated March 11, 2008, on the status of the Greenlife Grocery conditional zoning application: "Earlier this afternoon, City staff met with representatives of Greenlife Grocery to discuss the status of their application. Greenlife has now committed new resources in the form of project manager Reggie Vachon to facilitate the progress of this application. Mr. Vachon has been meeting with several key staff to explore preliminary technical issues and has also been meeting with the site architect and landscape architects to solidify the basic elements of the site design. Mr. Vachon has also been working closely with the Greenlife owners on the budget and finance aspects of the project which are critical and essential to the overall success. All in attendance agreed that communication with the community was important and the Greenlife representatives committed to arrange for a community meeting once plans were further along. The rough timeframe that was discussed is as follows: April - Internal budgeting and finance work; Select a surveyor and engineer; May - Conduct and complete survey work; Refine site plan work; Initiate engineering site plan work; Apply and receive water and sewer allocation requests; June - Submit complete application to City of Asheville; Attend Technical Review Committee meeting; and July - Hold community meeting (applicant may choose to hold community meeting prior to Technical Review Committee). Staff will continue to update council as progress is made."

### **Closed session**

At 8:20 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) To consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(2); and (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; and BFS Retail and Commercial Operations, LLC. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilwoman Cape and carried unanimously.

At 8:50 p.m., Councilman Newman moved to come out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

### **IX. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 8:50 p.m.

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CITY CLERK

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MAYOR