

Worksession

Present: Mayor Terry M. Bellamy, Presiding (arrived in meeting at 3:49 p.m. due to a NC 21st Century Transportation Committee meeting); Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower (arrived in meeting at 5:11 p.m. due to a prior engagement); Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

BUDGET PREVIEW

Chief Financial Officer Ben Durant said that this is an update on the current year budget and a preview of the Fiscal Year 2008-09 budget.

He said that staff will be presenting City Council with the 3rd Quarter Financial Report on May 13, 2008. The Fiscal Year 2008-09 Manager's Recommended Budget will also be formally presented to Council at the May 13th meeting.

He then provided Council with a brief update on current year budget trends as of the end of February 2008, including an update on projected fund balance. He also provided a preview of the Fiscal Year 2008-09 budget.

He explained the current year trends, which include (1) Civic Center budget amendment; (2) rising labor/fuel costs for Transit; and (3) health care budget amendment. Regarding Fund Balance, the adopted budget Fund Balance percentage is 19.5%; the current budget is 16.9% and the Year End estimate is 18.9%.

He discussed the impact that the slowing economy has had on revenue growth. Using charts, he showed Council the basic revenue overview, property taxes revenue outlook, and sales taxes outlook (our growth estimate is 3.0% and the state-wide forecast is 1-2%. Other General Fund revenues include (1) Powell Bill (a) League of Municipalities forecast: down 6-7%; and (b) City Powell Bill estimate likely \$175,000 too high; and (2) Investment Earnings (a) initial projection: 0% growth; and (b) interest have declined.

He then reviewed the following expenditure outlook - rising costs:

- Consumer Price Index (CPI): 4.6%
- Health insurance contribution: \$1.5 Million
- Full-Year funding for new positions: \$800,000
- Increased Transit subsidy: \$392,000*
- Fuel costs rising faster than CPI: \$328,000 (12.0%)
- Landfill tip fees: \$237,000
- 911 dispatch contract: \$119,000
- Criminal Justice Information System contract increase: \$165,000
- Construction costs exceeding CPI: \$63,000 (19.8%)

* assumes continuation of \$248,000 subsidy from parking fund.

Budget balancing strategies include (1) revenue enhancement (a) increased cost recovery for Fire inspections; and (b) adjustment of fees for inflation; (2) personnel (a) maintain competitive compensation package; (b) eliminate selected vacant positions; and (c) reliance on attrition savings (excluding Public Safety); (3) operating (a) departmental reductions/re-engineering; (b) reduce training/travel, professional services and small capital; (c) reduce Outside Agency funding; and (d) eliminate Manager's contingency; and (4) capital (a) reduce pay-as-you-go funding; (b) explore additional financing alternatives; and (c) use land sale revenue to fund major land purchases/capital.

He reviewed the budget preview of the multi-year outlook: (1) history indicates that Asheville's recovery from a cyclical economic slow-down won't be rapid; and (2) Some of Asheville's budget issues are structural: workforce issues; no differential water rates; grant revenue trends; sales tax distribution; tax base growth/annexation; age of infrastructure; and revaluation and tax rate implications. He briefed Council on the multi-year outlook of revenues and expenditures.

New resources are required to achieve the following strategic goals and action plans: tax relief; safest city; major capital improvements; sustainability and community development; and greenest city.

He concluded by saying that (1) structural issues compounded by cyclical economic trends; (2) actions necessary to address cyclical trends (a) avoid aggressive service expansion; (b) examine unfilled jobs (non-public safety); (c) reduce "controllable" operating costs; and (d) defer capital; and (3) actions necessary to address structural issues (a) CIP planning to include dedicated funding system; (b) identify specific funding options for safest city, greenest city, etc.; (c) set appropriate revaluation and tax rate policies; (d) pursue on-going re-engineering and innovation initiatives; and (e) identify core versus strategic services and set appropriate priorities.

Staff recommends that Council review the information on key budget trends and provide direction on the budget balancing strategies that staff is pursuing so that staff can complete work on the Fiscal Year 2008-09 Manager's Recommended Budget.

At 3:49 p.m., Mayor Bellamy arrived in the meeting.

Throughout discussion, Mr. Durant responded to various questions/comments from Council (noting that staff will provide additional detail when necessary or when requested). Some questions/comments are, but are not limited to: do we always compare our sales tax estimates with the State; have we calculated energy savings into the green initiatives that might offset those fees; request to see expanded conversations on what we might do to reduce our need for tipping fees; what percentage increase is for tipping fees; need to investigate an interlocal agreement with Buncombe County regarding tipping fees; what is the percentage increase for the CJIS program; is the CJIS Program beneficial to the City; what is the rationale of the 45%/55% (County) split for the CJIS Program; request for additional information in understanding the split rationale for the CJIS Program, especially since City residents already pay for part of the service through their payment of County taxes; and what percentage is the property in the City is tax exempt property.

City Manager Jackson said that staff has some recommendations regarding options regarding commercial garbage collection.

Regarding tax exempt property, Mayor Bellamy said that Raleigh has a lot of state-owned property and asked staff to look at what creative ways they are addressing their shortfalls. In looking at our multi-year picture, Council needs to look at our infrastructure which has been neglected in the past. As we continue to work on the issue of water, the on-going maintenance of our facilities must be addressed with something other than property taxes, e.g. partnering with the Tourism Development Authority, County or State.

CO-SPONSORSHIP EVENT SUPPORT

Ms. Diane Ruggiero, Superintendent of Cultural Arts, said that this is a review of the administrative procedure and funding of the City of Asheville co-sponsored event program.

The City of Asheville co-sponsors events that benefit local non profit organizations and enhance the community with public events, parades, and festivals. For 2008, the City's financial contribution to co-sponsored events is estimated at \$245,500 of in-kind goods and services.

Going forward, the City of Asheville will issue a Request for Proposal (RFP) in the fall of each year for organizations and individuals wishing to apply for a co-sponsored event. The RFP clearly outlines the program criteria and expectations. Prior to the RFP deadline, the City of Asheville will conduct a series of workshops to assist potential applicants through the application process.

Staff will review the applications, followed by the Recreation Board who will evaluate, score and rank all applications and make the final recommendation to City Council. Events with a high ranking will receive co-sponsorship support up to the amount approved by the City Council. After each event, applicants receiving co-sponsorship will submit an event evaluation report which will be considered in the event they should apply for support in the future.

The City of Asheville is currently absorbing lost revenues and the costs of in-kind goods and services for the co-sponsor event program each year primarily in the areas of over time which has a significant impact on the City's operating budget each year. Council could plan for such cost by establishing an annual budget estimated at \$150,000 to cover direct costs (overtime, vehicles, etc.) and lost revenue (permit fees, water, etc.). Council could provide additional funding, based on budget availability, to cover additional events.

Pros:

Ensures co-sponsored events are aligned with the City's goals and vision;

- Allows the City to budget accordingly;
- Defines the process and the goals to the applicants;
- Provides better customer service through the RFP conferences;
- Controls the amount spent each year on co-sponsored events.

Cons:

- Potentially lowers the number of qualified applicants/events;
- Organizations will have to plan further in advance;
- Organizations will have more paperwork to complete.

Fiscal Impact: \$150,000 from the general fund to cover direct cost (overtime, vehicles, etc.) and lost revenue (permit fees, water, etc.) which would represent a savings of \$95,000 compared with previous year allocations upwards of \$245,000.

The Asheville Parks, Recreation and Cultural Arts Department requests City Council to consider the administrative procedures and funding proposal for co-sponsored events in preparation for Fiscal Year 2008/09.

Councilwoman Cape stressed that the City's financial contribution to co-sponsored events contributes to economic development in this community.

In response to Councilwoman Jones, Ms. Ruggiero said that staff works with the applicants to help them identify areas to reduce the overall cost.

In response to Councilman Newman, Mr. Ruggiero said that staff will come back to Council with the list of outstanding events from August 1 - December 31, 2008, and suggest those events be judged on the criteria established. If so, then staff will work with those outstanding events to expedite their application process, since that criteria was not established when they originally applied for co-sponsorship. Once Council determines the amount to budget for co-sponsorships for Fiscal Year 2008-09, they will reserve some money to account for the applications that they will get for events to be held in January-June, 2009.

Mayor Bellamy asked for a breakdown of this event information specifically what was originally proposed and what is proposed now (after looking where costs could be reduced). Also, as liaison to the Recreation Board, there was discussion about the City's relationship with the Bele Chere. Since City Council doesn't appoint the Bele Chere Board, discussion has been held about the Board possibly being a City-appointed Board, as we look for the need of more direct accountability for finances. She looked forward to that conversation coming back to Council. She also suggested the Recreation Board be more involved in the co-sponsorship review. In addition, regarding co-sponsorship, diversity is important and we need to keep in mind the various ethnic and elderly events so we have a broad spectrum of events.

City Manager Jackson said that regarding the Bele Chere Board, we have asked the consultant who is developing the Downtown Master Plan to look at all the advisory board structures for recreation. He will check on the status of that and report back to Council.

MERRIMON AVENUE ZONING STUDY UPDATE

Interim Planning & Development Director Shannon Tuch said that this report to City Council is a summary update of the April 2, 2008, community/stakeholder meeting for Merrimon Avenue.

In November of 2007, the Asheville City Council reviewed some recommendations from staff that differed somewhat from earlier recommendations promoting the creation of a new Mixed Use District; the change in recommendation came about as a result of new concerns raised by property and business owners along Merrimon Avenue. The Council asked staff to arrange another community/stakeholder meeting in an effort to identify some shared goals from all stakeholders. The stakeholders included representatives from both the residential community and the business community along with City staff representing the City's general interests. Attendance at the meeting included:

Merrimon Ave. Business Group: John Kledias, Eric Schaeffer, Scott Shealy, John Swann, Chuck Taft, Randy Jameson, Chris Peterson, Foster Shriner

Merrimon Ave. Study Group (residential community): Mike Lewis, Billie Buie, Hedy Fischer, Robbie Sweetser, Terri March, Susan Roderick

City Staff: Shannon Tuch, Alan Glines. Marsha Stickford

Topics of discussion and desired outcomes were shared with the participants ahead of time along with some background information and past reports and research. The meeting was facilitated by Ms. Kathy Marth of the Buncombe County mediation center who followed the "Participatory Decision Making Diamond Model" for the meeting. This model is designed to provide an appropriate level of background with an equal, yet focused, discussion of the pre-determined topics; the desired outcome is to identify common support and goals while also identifying conflicting goals or concerns. Ms. Marth was commendable in her efforts to keep the conversation focused; however, the result of the meeting was somewhat mixed with some participants growing frustrated with the topics of discussion and others frustrated at the perceived impasse and futility of working together for a shared vision. Nevertheless, the meeting did produce some information of value and is expressed below. The following format begins with stating the current staff recommendation and the respective groups' response to each.

Recommendation #1: 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 the N.C. Dept. of Transportation (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.

Response:

- Business Group – Generally okay with the changes to sidewalk standards but did express some concern with the potential impact on available parking, particularly for small lots; would like to see some exceptions for small lots considered. They were unclear about the lighting issue. They supported the idea of providing incentives for pedestrian site enhancements (emphasis on non-mandatory requirements).

Study Group – Generally supportive of all the recommendations listed in #1; would like policy not allowing trees over water lines to be re-examined using certain species identified to not cause problems for water line infrastructure.

Recommendation #2: 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.

Response:

- Business Group – Supportive of a parallel set of standards that would encourage a mixed-use product; unsure how applying them as a USSR would work, may want to consider an overlay zoning or other product. Some concern over the size limitation recommended by staff (25K for single story, 45K for multi-story) as part of collapsing the CB districts together; also concerned over impact on drive-through windows but seemed generally supportive of allowing them provided they could meet certain requirements (hours of operation, stacking, placement, etc.). Appreciated the proposed standard that would maintain a minimum setback.

Study Group – Expressed concern over using the drive-through windows as an incentive; felt it was somewhat contrary to pedestrian enhancements. Also appreciated maintaining a minimum setback.

Recommendation #3: 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.

Response:

Business Group – Some concern over the (unforeseen) impacts of collapsing the existing districts together but appreciated the intent of keeping the existing development opportunities unchanged; desire for stability, “don’t want the rules to keep changing”.

Study Group – Conceptually supportive of collapsing and simplifying the districts and developing incentive based alternatives for mixed-use, smart growth development; need more detail to respond in more depth.

The groups had also been asked to provide a list of issues that may not have been covered adequately in the recommendations. Meeting time did run out towards the end and no additional comments were offered by the Business Group; however, the Study Group did offer the following:

- Front doors should be placed on the street (perhaps as part of the alternative standards);
- Wanted method for calculating building height to be re-examined (had offered alternative in the past);
- Current recommendation does not address concern over potential for tall structures, particularly north of WT Weaver Blvd.;
- Concerns about the appropriateness of HB zoning for Merrimon;
- Would like possibility of 3-lanes for Merrimon to be considered (would provide space for bike lanes, street trees, sidewalks, on street parking, etc.);
- Reduce curb-cuts.

Pros:

- Provides new development opportunities not previously permitted
- Provides security/stability to existing development opportunities
- Simplifies the Unified Development Ordinance (UDO) (by reducing the number of zoning districts)

Cons:

- Community’s tolerance for change may be exhausted (rezoning could be required)
- May result in a non-uniform development along the corridor for an extended period of time.

Fiscal Impact: From a memorandum from Public Works Director Mark Combs dated October 16, 2007, staff estimates costs to be \$500 per linear foot for a total estimated cost of \$10,803,200 for burying overhead utilities.

Despite the trouble experienced at the meeting, staff feels that the above listed items identify some common support for the staff’s former recommendations and would encourage that Council explore a potential wording amendment establishing alternative standards for Merrimon, including the possibility of collapsing the CB-I and CB-II districts together. This should be done in context with an overall examination of the UDO and basic development standards.

Should Council desire to wait until such a time that a comprehensive examination and update of the UDO is undertaken, staff recommends that a minor wording amendment that removes the opportunity for a zero-foot setback on Merrimon Avenue be considered.

Because action on the Merrimon Avenue Zoning Study ties into the following topic of options for updating and streamlining the Unified Development Ordinance (UDO), Ms. Tuch then provided Council with her report on that issue.

She said that a considerable amount of Mayor and Council Member interest has been expressed regarding a comprehensive update and review of the UDO. For some time, Planning staff has been identifying areas of need and have incrementally been addressing a number of concerns through a series of wording amendments. Most recently, focus has been directed to the creation of new standards accommodating new practices and technology in addition to those amendments that address identified shortcomings (commonly referred to as “housekeeping amendments”).

While staff is comfortable working towards resolving existing conflicts and shortcomings found in the UDO, the accumulated effect of many amendments over the last ten years has resulted in a less fluid and straightforward document. Additionally, the desire to accommodate many interests by incorporating a variety of exceptions and special circumstances into the code has resulted in a set of standards that are confusing and challenging to follow.

Asheville's UDO is described as predominately "Euclidian", also commonly known as "Traditional". In addition, it also contains certain districts that are more form based in nature (Neighborhood Corridor, Urban Village, Urban Place, etc.) resulting in a hybrid document. Interestingly, more municipalities continue to employ a traditional code while some have followed a similar path as Asheville, incorporating elements of a form based code. To date, more municipalities do not use a form based code; however, interest and popularity in form based code is growing.

At present, the City has initiated a master planning process for the downtown area which includes a series of information gathering sessions, public charettes, and other consensus building techniques to develop a shared vision for Asheville's downtown. Ultimately, this vision will be reflected in a series of recommendations and a set of form based development standards. A similar process could be employed for other parts of the City with the creation of a form based document to guide development in those areas. Another alternative could be the consideration of maintaining the existing traditional code with significant efforts at re-write and consolidation; this effort could include the development of many more illustrative examples to help demonstrate specific concepts or standards. Either option would benefit from some work to strengthen the integrity of the existing code in order to have a sound document from which to evolve.

The City Council's 2008'-09' Strategic Operating Plan included a commitment to sustainability and long-range planning. Having a clear, comprehensive and streamlined UDO is necessary for long range planning and maintaining sustainable development activity.

Pros:

- Create a simpler and easier to follow code
- De-emphasize land uses, allowing a market driven mix (viewed as a con by some)
- Emphasizes building form for more unified and consistent development pattern (viewed as a con by some)

Cons:

- Changes to development standards results in some uncertainty and instability (may have unintended consequences and could require correction)
- Process can be lengthy (12 to 18 months, depending on desired product and level of public involvement)
- Requires a strong public commitment
- Requires financial resources beyond standard budget for professional services

Fiscal Impact: Dependant on desired product and level of public involvement – consulting fees are estimate to be between \$80,000 - \$150,000. The potential cost of the professional service is unbudgeted.

City staff recommends City Council allow staff to focus on repairing the existing code, and postpone consideration of the consulting services until the financial outlook improves.

In response to Mayor Bellamy regarding whether the Merrimon Avenue zoning is a top priority, Ms. Tuch replied no and that most of the businesses or property stakeholders on the corridor didn't feel any particular urgency to pursue any changes or to pursue alternative development options, but it is a viable opportunity. One concern expressed over and over again in the meetings was change in zoning, regardless of whether the zoning is a good change.

In response to Mayor Bellamy, Ms. Tuch said that both sides wanted a minor wording amendment that removes the opportunity for a zero-foot setback on Merrimon Avenue. Since there has been some concern over the way we measure height, staff can look at that as well. She noted that staff can incrementally make some changes to the UDO but at some point they will need to do the larger zoning action.

Vice-Mayor Davis noted that the Merrimon Avenue study was not staff driven initially, but community driven. There was a group of concerned citizens that met with staff about development on Merrimon Avenue and that began the driving issue. He felt that collapsing the CB-I and CB-II districts would answer a lot of the developmental problems.

In response to Vice-Mayor Davis, Ms. Tuch said that it's possible for City staff to continue to work with the two groups.

Vice-Mayor Davis would support doing what we can to eliminate some of the immediate problems as we recognize the difficulties that the corridor provides.

Councilwoman Cape supported moving forward with the three recommendations recommended by City staff. There has been a lot of good work done on both sides. She felt the recommendations offer quite a bit of flexibility and options for people.

Ms. Tuch said that the only thing staff presented was the conceptual idea of creating an alternative set of standards. If staff

is directed to flush that out and actually create a draft of those standards, that would give people something to respond to in more detail.

Regarding form based codes, Councilwoman Cape said that another aspect of form based codes is how we write our Code so it's more readable and the charts are easier to understand. She supported that form. She suggested the City look to interns to help us tighten our Code.

Councilman Newman also supported the three staff recommendations. He felt that a lot of the issues, including form based codes, will be vetted to a certain extent through the Downtown Master Plan process. Regarding long-term dialogue, he was supportive of the City talking to Buncombe County and other people about regional planning issues.

Mayor Bellamy thanked the community for their time spent on this issue. She supported any minor wording amendments. Regarding a form based code, she wondered if a pilot project for a particular area of the City might be smoother, but felt that it would require a higher level of oversight than interns.

Councilwoman Cape said that most form based codes normally encompass a region, street or area. She hoped that we can investigate what the different coding options are in the future.

In response to Mayor Bellamy, Ms. Tuch felt staff can go back to the larger group to gauge interest to working on a draft, understanding it is only a draft. She thinks we can succeed in collapsing the two districts together, creating some new standards and getting people to accept them, but it will take a lot of work to get there. That is her concern from a staff perspective, given all the other priorities as well as the context of the possibility that we may look at some larger scale changes to the UDO at a future date. She wouldn't want to spend so much time and energy on something and then turn around and do something very different with it in 18 months from now, if Council wants to do a whole scale change or update to the UDO (appearance, simplification, streamlining, etc.).

In response to Mayor Bellamy about direction, Ms. Tuch said that she will continue conversations with NCDOT and Progress Energy about utility lines. Regarding the sidewalk improvements, it's not the most difficult thing to achieve and that is the one element (although there was some concern from the business people about exactly how much that would impact them) in concept they supported. She does, however, need direction from Council about the development of the alternative standards and the simplification by collapsing those two districts together. That will require a zoning change and there are people in the community who are concerned about any kind of zoning change. That would require a commitment to try to educate those people and explore what the potential impact would be and try to mitigate that. Creating those alternative standards and the corresponding zoning change is the stumbling block.

Vice-Mayor Davis felt it was good to collapse the two districts, but the angst in going through that process is not something he would support now. He supported the wording amendment that removes the opportunity for a zero-foot setback on Merrimon Avenue.

After Ms. Tuch explained in detail the details of collapsing the two districts, Councilwoman Cape felt that since there is a lot of resistance to change, she would support slowing the process down and not proceeding with that issue at this time.

Ms. Tuch responded to Councilman Newman about the elimination of a zero-foot setback on Merrimon Avenue.

STORMWATER POLICY REPORT

Status Report on Current Ordinance

As a result of Councilman Newman's request on March 25, 2008, Director of Transportation and Engineering Cathy Ball said that the purpose of her presentation is to update Council on the effectiveness of the current stormwater ordinance.

On August 21, 2007, City Council adopted a revised Stormwater and Erosion Control Ordinance. This ordinance addressed a federal mandate to improve stormwater quality runoff from urban locations. It also created some tools to reduce sediment runoff from construction sites. Specifically, these tools include;

- Implement aquatic buffers;
- Mandatory weekly/bi-weekly inspections;
- Stricter fines and penalties; and,
- Additional staffing.

Aquatic Buffers

A thirty-foot aquatic buffer is required as part of the ordinance. This is the minimum width required by the state and federal government. The application of the buffer is stricter in the City's ordinance than in the federal and state laws. The federal and state laws do not require an aquatic buffer for projects that develop less than one acre. The City's ordinance requires an aquatic buffer for all new development and re-development projects that increase the value of the building more than fifty percent.

In hind-sight, we would recommend raising the threshold of the buffer requirement to a more manageable size development. In many cases staff is giving exceptions to projects less than 10,000 square feet of disturbed area because these sites cannot be constructed without intruding into the buffer area. We have found that the additional administrative review and the cost associated with this review do not justify the additional regulation.

Staff would recommend that the buffer requirement apply to a higher threshold of development. The change would be that all new development and redevelopment (>50% improvement of the building) that disturbs over 10,000 square feet.

Mandatory Inspections

The ordinance adopted last August requires that all development over 10,000 square feet of disturbed area provide weekly or bi-weekly inspections by an engineer or their representative. In general, staff has found this requirement to be helpful. We have continued to see resistance from developers. Their perception is that the cost outweighs the benefits. Staffs perception is that the engineer is an important part of the team, not just in the design phase but during the construction phase. Prior to this ordinance, the engineers typically, were only involved in the construction phase when a serious problem occurred.

Staff would recommend the change be that inspections can be performed by a certified professional.

Stricter Fines and Penalties

Staff feels strongly that the stricter fines and penalties have contributed to better construction and maintenance of erosion control measures. While it has not eliminated the problems, contractors are taking the installation and maintenance of erosion control measures very seriously. We have assessed almost \$72,000 in immediate fines since the ordinance was adopted. A summary of the immediate fines is as follows:

1. Grading without a permit 57
2. Grading in the buffer area 6
3. Off-site sediment damage 22

Of the 85 immediate fines we have issued, twenty-one (25%) have appealed to the Erosion Control Plan Review Committee. In all but two cases, the amount of these fines has been reduced due to extenuating circumstances. Some developers have raised concerns about the make up of the Erosion Control Plan Review Committee. This committee is chaired by the Public Works Director, with the Building Safety and Planning Director serving as the other two members. While this board may appear to be favorable to City staffs assessments, their record would indicate otherwise.

Beaucatcher Heights subdivision off Kenilworth Road has received the more fines than any other site with the total amount of the fines being \$11,503 (all paid). She reviewed a spreadsheet with all of the fines the City has issued since August 2007.

In addition to the immediate fines, we have issued 47 official Notices of Violation for various violations of the ordinance. These notices have resulted in better compliance with the ordinance.

Staff would recommend the change of the amount of immediate fine for grading in the buffer area - too high.

Staffing

In August, Council approved six additional staff members in the Stormwater Services Division to address the issue of enforcement and plan review. These additional positions consisted of three construction inspectors, two plan reviewers and one administrative staff. The plan review turn-around times have gone from an average of three to four weeks down to less than two weeks. The plan review process has been reengineered so that grading and stormwater permits are issued through the Development Services Center of the Building Safety Department. This insures that permits are not issued in error.

The addition of the construction inspectors has resulted in the streamlining of the inspection process. Staff reengineered the inspection process to move inspections for waterlines to the Water Resources Department. This allowed the construction

inspectors to focus on stormwater and erosion control (site) inspections. One of the Construction Inspectors was promoted to oversee the violation process to make sure follow up inspections were performed. Since August we have performed over 3,000 site inspections, compared to approximately 1,700 for the previous eight months. This is an increase of 77 percent since additional staff were approved.

At this time, 5:11 p.m., Councilman Mumpower arrived at the meeting.

In December 2007, we implemented twenty-four/seven on-call services for sediment and erosion control violations. Between the hours of 5:00 PM and 8:30 AM and on weekends, calls will be received by Daniels answering service at 828-258-4747. (During regular working hours, concerns can be reported at 828-259-5587. Since December 1, 2007 we have received five after-hours calls. We pay a Construction Inspector \$50 per week to be on call.

Summary

In addition to meeting a federal and state mandate, the current ordinance has provided some tools to reduce sediment runoff from construction sites. The additional staff has streamlined the plan review and inspection process. Staff is working with the Watershed Policy Committee to make recommended some revisions to the Stormwater and Erosion Control Ordinance.

Better compliance with the Stormwater and Erosion Control Ordinance contributes to achievement of a strategic goal for the Natural and Built Environment. Additionally, it keeps our water clean, streets safer and neighbors happier.

Pros:

- In general, contractors are installing and maintaining stormwater and erosion control measures as a result of increased enforcement.
- Staff has more tools to ensure that off-site sediment does not occur.

Cons:

- Some minor tweaking of the ordinance could make it more effective and practical.
- The development community has expressed concerns over the make up of the Appeal Committee.

Fiscal Impact: None

The purpose of this presentation is to update Council on the effectiveness of the current stormwater ordinance.

Update from the Watershed Policy Committee

Director of Transportation and Engineering Cathy Ball updated Council on the work of the Watershed Policy Committee.

The Watershed Policy Committee was established as a stakeholder group to assist the staff in evaluating and making recommendations to the Planning and Zoning Commission and City Council on the Stormwater and Erosion Control ordinance. This group, in a limited capacity, assisted staff in the development of the Stormwater and Erosion Control Ordinance adopted by City Council on August 21, 2007.

Following the adoption of the Stormwater and Erosion Control Ordinance in August 2007, City Council directed staff to reestablish the Watershed Policy Committee. They directed staff to work with this Committee to readdress some areas of the ordinance, specifically the aquatic buffers, mandatory inspections and enforcement components. Council remanded the ordinance back to the Planning and Zoning Commission for review.

The membership of the Watershed Policy Committee was expanded in a somewhat open and informal manner.

The Watershed Policy Committee is charged with making strategic changes to the Stormwater and Erosion Control Ordinance to improve the Natural and Built Environment. Additionally, it keeps our water clean, streets safer and neighbors happier.

Pros:

- The expanded Watershed Policy Committee has reviewed the current ordinance and will be making more informed recommendations for improving the ordinance.
- Additional public input has been solicited as part of this process.

Cons:

- A large investment of time and resources has gone into the group process.
- The make up of the Watershed Policy Committee was open to anyone wishing to serve, therefore, did not have a balance of representation.

Fiscal Impact: None

The purpose of this presentation is to update Council on the work of the Watershed Policy Committee.

Mr. Marshall Taylor, a Professional Engineer with Brown and Caldwell who was hired to facilitate the group, said that the Watershed Policy Committee has met every two weeks for four hours each week since October 2007. They have held two public meetings with a third and final meeting scheduled for May 2008. They established five committees to evaluate the issues. These groups include the following:

- Aquatic buffers;
- Erosion control;
- Cost benefit analysis;
- Enforcement; and,
- Administration.

The City of Asheville was required to implement a Clean Water Act NPDES Phase II stormwater program. The program is required to provide public education and outreach; public involvement/participation; pollution prevention/good housekeeping; construction site controls; post-construction site controls; and illicit discharge elimination.

The mandate requires the City to establish the authority to regulate stormwater management controls covering (re)development during and after the construction phase and eliminating illicit discharges.

The Committee has held 11 committee meetings and two public information meetings. They have reached consensus on a number of technical revisions to the ordinance which remove unnecessary complications, facilitate administration, and avoid unintended consequences which could arise from the language in the ordinance.

To date, (1) a cost/benefit working group has proposed several ordinance changes which add flexibility to the requirements and reduce the compliance burden on property owners and developers, but maintain the program's effectiveness. It is likely that the recommendations will receive near consensus endorsement; and (2) continuing discussion about modifications to the aquatic buffer requirements hold some promise of recommended modifications that will be supported by a strong majority of the Committee. The recommendations address both the basic aquatic buffer requirements and the implementation of credits and incentives for going beyond the requirements and restoring aquatic buffers where they are not required.

The committee is scheduled to meet with the Planning and Zoning Commission on May 22, 2008. They will make formal recommendations to City Council in July 2008.

In terms of the riparian buffer policy, Councilman Newman asked if the Committee is only considering a one-size fits all standard, or are they also considering the idea of alternative standards based on growth management policies? For example, it may be appropriate to have a larger buffer in areas zoned for low-density development and to have a smaller buffer requirement in areas designated for high-density in-fill development. This would be consistent with other land use policies that recognize that some areas near the city center and along our commercial corridors are appropriate for more intense development while the areas zoned for lower density and residential purposes are generally less appropriate for intense development. Mr. Taylor responded that the Committee spent an awful lot of time on that issue. The recommendations to come back to Council will have multiple sizes, but they may not address specifically what Councilman Newman is talking about. He explained that there are limitations of a state mandated minimum.

Councilman Mumpower believed that the inflated environmental concerns have been used as an opportunity to intrude on other people's personal property rights and that is not appropriate.

Ms. Ball responded to Councilman Newman when he asked if her overall sense of the new ordinance is working as intended and whether we are seeing better erosion control measures on the ground.

Councilman Newman was pleased that staff and the Committee are identifying ways not to reduce the effectiveness of compliance, but finding less expensive ways to do it.

In response to Vice-Mayor Davis, Ms. Ball said that the Committee's cost/benefit team has proposed several ordinance

changes which add flexibility to the requirements and reduce the compliance burden on property owners and developers, while maintaining the program's effectiveness.

In response to Vice-Mayor Davis, Ms. Ball said that she felt the most effective part of the ordinance is the initial failure fine. It sends the message to keep the erosion control measures in place. It seems harsh, but we are sending a message that your erosion control measures need to be a focus every day when you go to the construction site. Prior to this new ordinance, we did give grace for initial failure, but we did not see the kind of results that we are seeing now. She expected that the fines will drop over the next year because people will be doing a better job. She does, however, think the fines are too high on the buffer violations and recommended that the fine be lowered.

In response to Vice-Mayor Davis about the concern of the make up of the Erosion Control Plan Review Committee, Ms. Ball said that staff time for that Committee is pretty significant and they are open to the Watershed Policy Committee to make a recommendation. Vice-Mayor Davis would be open to exploring the possibility of an Appeals Board if that is the Committee's recommendation.

Closed Session

At 5:35 p.m., Councilman Mumpower moved to go into closed session for the following reason: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: Sofa Express, State of North Carolina, County of Buncombe and City of Asheville. The statutory authorization is contained in G.S. 143-318.11(a) (3). This motion was seconded by Councilwoman Cape and carried unanimously.

At 6:00 p.m., Councilman Mumpower moved to come out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

CITY-OWNED LAND REQUEST FOR PROPOSAL PROCESS UPDATE

Economic Development Director Sam Powers reviewed with Council the Request for Proposals (RFP) for City-owned property.

He reviewed the following RFQ-RFP activities completed (March 2007 to present): (1) Stakeholder meetings: goals and objectives defined; (2) market opportunities/constraints; (3) Request for qualifications; (4) Council worksession: site specific goals and uses; (5) public open house; (6) RFQ for adjacent property owners; and (7) developer pre-qualification - Pre-RFP meetings with developers in November of 2007; RFP issued to pre-qualified developers in December of 2007; and proposals received and evaluated in March, 2008.

Regarding the developer Proposals – (1) received February 29, 2008 (a) Eagle-Market Street Property – One; (b) Haywood at Civic Center – One; and (c) Parks Maintenance Properties – None; and (2) evaluated March, 2008.

Next week goals will include (1) overview of proposals received; (2) next steps; and (3) Council direction.

Councilman Newman wondered if we may be undercutting the ability to work with people when we ask for market rates, especially since one of our goals is affordable housing. Mr. Powers said that when we structured the RFP we made it incumbent on the potential responders to tell us what incentives they might have to have in order to make the project work for them. In addition, he thought there is a legal expectation that the City has to sell their property at fair market value or work on a development agreement that would allow us to sell for less than fair market in exchange for public benefits. He also felt we've had a few changes in the market that are temporary in nature, maybe 18-24 months, and he believed the Park Maintenance site is probably one of the best sites we have available in the City to meet the goals of workforce housing.

Councilman Newman agreed that the Park Maintenance site is well suited for affordable housing. He felt we should be more clear about that, because the reality is that our permit fee waivers and our Housing Trust Fund are just not strong enough policy tools for a private developer to buy a piece of property at fair market value and do anything other than a really modest level of affordability. He felt we should be clear that we want to see the property be redeveloped and we are going to donate it to whoever has the best proposal with the greatest public benefits.

Councilwoman Cape felt that if we put City-owned property on the table, we can make strategic investments with someone. All of the properties we have offered have opportunities for strategic value to our community and the dollar amount for the property is of the least importance to her. She was disappointed that we only have a few to choose from and just because we are going through this process doesn't mean we are locked in if something doesn't meet our goals. She felt we may need input

from the City Attorney on how we can structure conversation, other than just money for the property, around other things like encouraging economic development, workforce housing, etc.

Councilman Mumpower asked Mr. Powers to be prepared to address the following two questions next week when staff will be asking for Council direction on this issue: (1) how much money has been spent on this 2 year process; and (2) how many pieces of property did we start out with originally.

Councilman Newman hoped that the City continues to move forward. He did agree that it does cost some money to go through a process like this, but if we used a commercial realtor to sell them, there would be a 10% commission. He asked Mr. Powers to be prepared to advise Council what the alternative price would be for a real estate transaction like this.

Vice-Mayor Davis noted that the market has changed dramatically and he was fairly disappointed with that. He liked that we have a viable piece of not City-owned land in the Eagle-Market Street area. He agreed with Councilwoman Cape in that unless we are able to achieve goals in this process, we are doing nothing more than selling land. He hoped that the two proposals will accomplish some of the goals we are looking for.

Vice-Mayor Davis asked what the next step would be if we find that the proposals submitted do not accomplish our goals. Mr. Powers responded that the next step would be a Council decision. The market has changed but we did receive two proposals that he thinks meets the requirements in terms of what we have outlined for evaluation. Council will need to decide if the proposals ultimately don't meet all or enough of the goals. The options would be to do the process again, wait until the Downtown Master Plan is complete, or just wait.

Mayor Bellamy read a portion of the November 21, 2006, City Council minutes where Council agreed that their goals and objectives would be "workforce housing, enhanced tax base, smart growth, realistic market opportunities, attract innovative developers, path to redevelopment over the next 2-4 years, focus City efforts to be result oriented, transparent process, best use of public assets, economic and environmentally sound, potential public space, involve local businesses, support City's Minority Business Plan, cost benefit of relocating municipal facilities, impact on taxpayers and promote the live/work/play downtown." Not having the actual proposals, it's hard to say whether we've met all these qualifications. She will reserve her comments until we actually see the proposals to say if they meet the original intent that was agreed upon.

STATE LEGISLATIVE AGENDA

City Attorney Oast said that this is the consideration of the City's legislative agenda for the 2008 "short" session of the N. C. General Assembly

The relevant deadlines for local bills are May 21, 2008, for submitting bills to the Legislative Services Office (bill drafting), and May 28, 2008, for introduction in either chamber. These deadlines are established by joint resolution.

1. Woodfin / Asheville Boundary. As noted in the March 18 Staff Report, HB 758 regarding the boundary between Asheville and Woodfin is a matter with respect to which action was not completed last year. We have refined the boundaries, had further discussions with Woodfin, and are in the process of contacting the relatively few property owners who will be affected by the reconfiguration.
2. Parking / Towing. Recent incidents suggest that previous measures taken to address the issue of non-consensual or "predatory" towing have not been as effective as hoped. Accordingly, we are:
 - (a) Reviewing our current authorization to determine what else may be possible without further authorization from the State.
 - (b) Proposing that the State broaden municipal authority to regulate this activity.

As to (a), the general federal preemption has some exceptions that permit the states or local governments to adopt regulations related to safety and to rates charged for non-consensual tows. In North Carolina, a local government's ability to regulate business or commerce is derived from the State, and there are constitutional provisions that limit how much of this authority can be delegated to local governments. With respect to public safety, local governments have somewhat broader authority to regulate.

Notwithstanding the limitations under State or federal law, local governments in North Carolina (including Asheville) and elsewhere have adopted ordinances regulating certain aspects of non-consensual towing. When these regulations have been challenged (and I have found no reported cases from North Carolina), the public safety

exception has been recognized as a source of local authority.

In 2004, the City of Raleigh adopted an ordinance that contained the following provisions:

- Tow companies must notify the police within an hour of towing a vehicle.
- Vehicle owners cannot be charged more than \$100 for tows without consent from the city's police department.
- Tow companies were mandated to move from a cash-only payment system to accepting credit / debit card(s).
- Companies are required to be on call 24 hours a day to ensure a motorists' initial call is returned within 15 minutes and in a position to release the vehicle within 45 minutes of the call.
- The owner is also afforded the right of removing personal property from the vehicle without charge.
- The ordinance prohibits a company from towing a vehicle if its owner returns before the vehicle leaves the lot, with an early release fee not to exceed \$50.
- Failure to comply with one or more of these requirements results in a misdemeanor charge punishable by a \$500 fine.

In his view, these are aspects of non-consensual towing that bear some rational relation to public safety, especially in view of the information (anecdotal and otherwise) that we have received from people who have had this experience. However, further review of the rate regulation provision is needed. An aspect not covered by Raleigh's ordinance but that may be relevant to Asheville is that there have been reports that the taxis called to transport persons to their towed vehicles appear to have some business connection with the tow truck operators. The City can and does regulate taxi fares, and this may affect Council's consideration of this aspect

At Council's direction we will further explore an ordinance that addresses the aspects of non-consensual towing summarized above, based on our current authorization to regulate in the interest of public safety.

As to (b), in view of the constitutional limitations on local acts regulating trade or commerce, Council may wish to explore with our local delegation or with the League of Municipalities the possibility of general legislation that would permit a broader degree of regulation of this activity. It seems like there are enough other cities where non-consensual towing is a recurring issue that there may be some support for such an effort.

Another issue that has potential for local legislation is to lower the threshold for us to place an immobilization device (boot) on cars that are illegally parked. The way it is right now, sometimes people accumulate a fairly hefty amount of fines before we can boot them. Then, after we do boot them and try to work out a payment plan, they frequently don't have the financial means to do that. What we want to do is to be able to attach the immobilization device earlier in the process and gain compliance that way.

3. Street Gang Prevention. Council has expressed a continuing interest in strengthening criminal laws related to gang activity. There were some bills introduced in 2007 that remain eligible for consideration this year, and Council may want to reinforce its support for them.
4. Salvia Divinorum. This is a substance that is sold in stores and online that is reported to have hallucinogenic properties. Salvia Divinorum is not on the schedule of controlled substances that the State regulates, and which forms the basis for criminal laws relating to drug use. Some states have or are considering dealing with this substance as a controlled substance. A very limited check has disclosed no such effort underway in North Carolina. Council may wish to monitor the legislative activity and take a position if and when information becomes available, or may encourage the General Assembly, through our local delegation, to initiate legislation.
5. Justice System Funding. As Council has learned from law enforcement officials, judges and prosecutors, the government's ability to prosecute criminal activity effectively is limited by funding for the justice system. Council has in the past encouraged increased funding for elements of the criminal justice system, both locally and on a State-wide basis. Council may renew its support for increased funding.
6. Mental Health Delivery. Similarly with respect to mental health delivery, local governments – especially regional centers like Asheville – experience the impact of State funding decisions in the form of local facilities closing down, or cutting back on services. Council in the past has expressed support for the funding of mental health programs locally and State-wide, and may want to renew that support.

7. Distribution of Video and Telecommunications Sales Tax to Local Governments. As Council may remember, a law was enacted in 2007 to essentially place the responsibility for cable franchising with the State. A related bill was introduced (SB 1068) that, among other things, would increase the amount of the State tax collected on these operations that is distributed to local governments. The bill would also increase the amount of that tax allocated to local PEG channel support. If the League of Municipalities has not expressed a position on this, it probably will do so. Council may express its position on this bill now, or obtain more information and possibly join other local governments in appropriate action.
8. Smoking in Public Parks. Other communities, including Raleigh, would like the ability to prohibit this as well.
9. Incorporation. Recent activity in this area and elsewhere in the State to incorporate areas on the periphery of major cities has heightened awareness of the implications of such incorporations for planning and other purposes. Council may wish to express its concern in an official way, including asking the General Assembly to study this issue.

As always, we will monitor legislative bulletins and advise Council of items of interest. Additionally, we receive information from the League of Municipalities about matters of particular interest to N. C. cities, and will advise Council as to those matters as well. If Council members become aware of matters of interest in the legislature, please advise our office and we will be glad to obtain available information.

At Council's direction, he would prepare appropriate resolutions on any item, and will monitor with our delegation those items with respect to which bills have been introduced at our request.

The Asheville Chamber of Commerce is in the process of adopting its legislative program. As soon as it is available, a copy will be provided to Council. Council should review this and determine whether there are particular items that Council wishes to express its own position on.

This is for update/informational purposes; no action is needed at this time. He will bring a resolution forward for Council's consideration at the April 22, 2008, meeting.

Councilwoman Cape supported most of the issues, except for the Salvia Divinorum issue. She could not lend her support for this until she learns more about that drug. She also asked that the issue of raising the drop out rate from 16 to 18 years be added to the legislative agenda.

Councilman Newman asked an item be added to encourage support for Asheville to have the authority to conduct voluntary annexations for developments that connect to the City government as is the norm across the state.

Vice-Mayor Davis agreed with City Attorney Oast in that there is a lot that can be done locally regarding non-consensual towing.

Mayor Bellamy explained the following issues she requested to be added to the legislative agenda (1) Jessica's law (dealing with child predators); (2) support for the creation of a database of illegal guns (guns apprehended through a raid or confiscated during a process of arrest); (3) homestead exemption act for veterans with disabilities; (4) support for the School Board's resolution supporting to increase the drop out age from 16 to 18 years; and (5) identify theft of children (parents who use their children's name and social security numbers to get credit).

Councilman Mumpower responded to each of the issues voicing support, opposition or general questions.

COMMUNITY MEETINGS

Mayor Bellamy said that in 2006 City Council community meetings focused on our strategic plan and in 2007 Council's community meetings focused on specific issues, e.g., homelessness, Bele Chere, etc. This year, she plans for Council's community meetings to be arranged a meeting with the Town of Weaverville. The format will include the City Manager giving an overview of major issues in Asheville. She noted that Weaverville's Town Manager will do the same. At the meeting, other key issues like growth and development, annexation and water will also be discussed. She said the meeting will take place in the William F. Wolcott Jr. Public Works Facility, located at 161 South Charlotte Street, in Asheville and will be from 5:00 - 7:00 p.m. The meeting will be open to the community. She will make arrangements for other communities in the future.

Mayor Bellamy asked that City Manager Jackson provide Council with his draft overview prior to April 29, 2008.

It was the consensus of Council for the 2008 community meetings to follow Mayor Bellamy's format.

BOARD/COMMISSION APPOINTMENTS

Regarding the Citizens-Police Advisory Committee, Vice-Mayor Davis said that the City Council Public Safety Committee is in the process of re-energizing the Committee. However, it was the consensus of Council to interview Mr. Cesar Romero and instruct the City Clerk to re-advertise for the west representative another month.

It was the consensus of Council to interview Dorothy Herbert, Brad K. Brock, Beth Gillespie and Scott Taylor for vacancies on the Historic Resources Commission.

It was the consensus of Council to instruct the City Clerk to re-advertise for vacancies on the Recreation Board.

After a brief discussion of what constitutes a design professional, City Attorney Oast felt that a design professional is someone that possesses a license or certification to practice some aspect, like an engineer, planner or architect. He felt that a licensed contractor is not necessarily for design. It was the consensus of Council to (1) interview Mark Allison for a vacancy on the River District Design Review Committee; and (2) instruct the City Clerk to talk with Gregory Sills to see if he is licensed, and if so, to arrange an interview for him as well. Upon inquiry of Councilwoman Cape, Vice-Mayor Davis said that the Boards/Commissions Committee will look at the role of the River District Design Review Committee as we move forward in developing the River, with input from the Committee members and staff.

Councilwoman Cape advised Council that a vacancy has just occurred on the Sustainable Advisory Committee on Energy and the Environment Committee. Vice-Mayor Davis said that the Boards/Commissions Committee will review that when they meet.

ADJOURNMENT

Mayor Bellamy adjourned the meeting at 7:11 p.m.

CITY CLERK

MAYOR