

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; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman William A. Russell Jr.

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Bellamy gave the invocation.

Mayor Bellamy commented on the wonderful City-County Memorial Day Celebration which recognized individuals who have given their lives and those who are protecting our lives. She asked everyone to keep in their hearts the people who serve our community and our country on a daily basis.

I. PROCLAMATIONS:

A. RECOGNITION OF CHRIS DOBBINS, FLEET MANAGER, AS RECIPIENT OF THE STATE CLEAN AIR RENEWABLE ENERGY COLLEAGUES AWARD

Mayor Bellamy was pleased to recognize Mr. Chris Dobbins, Fleet Manager, as the recipient of the State Clean Air Renewable Energy Colleagues Award. She said Chris Dobbins has been the City of Asheville's Fleet Manager since July 2000 and during his tenure, he has achieved numerous awards and accolades for the City for which he should be commended. While Fleet Manager, the City of Asheville's fleet received the 2nd Annual N.C. Mobile Care Award, which is the highest award recognition by the state to recognize outstanding individual and organizational efforts and leadership to reduce transportation related emissions. The Public Fleet Award recognizes that he has cut emissions through various efforts including the use of alternative fuels and advanced technology in our fleet vehicles. Mr. Dobbins secured the City's first electric vehicles in 2003, and after the opening of the Compressed Natural Gas (CNG) station in November of 2005, some of the City's fleet was converted to CNG technology in order to reduce carbon emissions. The City also received a \$40,000 grant from the N.C. Dept. of Environment and Natural Resources for compressed natural gas heavy truck, which will replace a diesel truck. The City of Asheville also secured its first hybrid vehicles in 2006 and began the use of BioFuels (B5 Biodiesel & E10 Ethanol gasoline) in May 2007. Mr. Dobbins takes a very active role in the Land of Sky Clean Vehicles Coalition & Clean Air Campaign Steering Committee to promote the use of alternative fuels within the region. All of these efforts, along with Chris' excellent directional and managerial skills, help meet Asheville City Council's goals of an annual 2% reduction in greenhouse gas emission until 80% reduction is achieved.

B. PROCLAMATION PROCLAIMING THE WEEK OF JUNE 1-7, 2008, AS "NATIONAL CARDIOPULMONARY RESUSCITATION AND AUTOMATED EXTERNAL DEFIBRILLATOR AWARENESS WEEK"

Vice-Mayor Davis read the proclamation proclaiming the week of June 1-7, 2008, as "National Cardiopulmonary Resuscitation and Automated External Defibrillator Awareness Week" in the City of Asheville. He presented the proclamation to Ms. Mary Barnett, representing the American Red Cross, and Fire Chief Greg Grayson, both of which briefed City Council on some activities taking place during the week and the importance of the automated external defibrillator to save lives.

Fire Chief Grayson also introduced Mr. Robin Linderman who survived a heart attack with the help of our automated external defibrillator and people performing Cardiopulmonary Resuscitation.

II. CONSENT AGENDA:

At the request of Councilwoman Cape, Consent Agenda Item "A" was removed from the Consent Agenda for discussion and/or individual vote.

At the request of Mayor Bellamy, Consent Agenda Item "C" was removed from the Consent Agenda for discussion and/or an individual vote.

At the request of Councilman Mumpower, Consent Agenda Item "E" was removed from the Consent Agenda for discussion and/or individual vote.

A. APPROVAL OF THE MINUTES OF THE FORMA MEETING HELD ON MAY 13, 2008, AND THE WORKSESSION HELD ON MAY 20, 2008

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

B. RESOLUTION NO. 08-104 - RESOLUTION OF INTENT TO CLOSE A PORTION OF EAST SCHENCK CRESCENT AND CALLING FOR A PUBLIC HEARING ON JUNE 24, 2008

Summary: The consideration of a resolution of intent to close a portion of the street known as East Schenck Crescent and setting a public hearing on June 24, 2008.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Biltmore Farms Inc. has requested the City of Asheville permanently close a portion of East Schenck Crescent. This closure will allow East Schenck Crescent to be re-aligned for better traffic flow at the intersection with Schenck Parkway

This closure is a part of the realignment of East Schenck Parkway providing interconnectivity of roadways and land use development complying with the Asheville City Development Plan, Land Use and Transportation.

Pros:

- The closure is a result of a realignment project at the location
- There will be no future compromise of ingress/egress to other property

Cons:

- Staff can find no potential challenges regarding the closure of a portion of East Schenck Crescent

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt a resolution setting a public hearing for June 24, 2008, to close a portion of East Schenck Crescent.

RESOLUTION BOOK NO. 31 – PAGE 177

C. RESOLUTION AUTHORIZING THE CITY MANAGER TO MODIFY THE HOUSING TRUST FUND TERMS ORIGINALLY AGREED UPON BY MOUNTAIN HOUSING OPPORTUNITIES FOR THE PROJECT KNOWN AS CLINGMAN LOFTS

This item was removed from the Consent Agenda due to Mayor Bellamy's conflict of interest.

D. ORDINANCE NO. 3620 - ORDINANCE ENACTING OR CHANGING THE SPEED LIMIT ON HAWTHORNE DRIVE, EAST HAWTHORNE DRIVE AND WOLFE COVE ROAD TO 25 MILES PER HOUR

Summary: The consideration of an ordinance to enact or change the speed limit on Hawthorne Drive, East Hawthorne Drive, and Wolfe Cove Road.

Hawthorne Drive, East Hawthorne Drive and Wolfe Cove Road have been identified for speed concerns by residents, City Boards and Commissions, City Council, the Asheville Police Department, Transportation Services Division staff, and/or other City staff. The Transportation Services Division staff has conducted a field review along these streets to assess existing conditions including street geometry and conditions and/or speed studies. The Asheville Police Department supports the recommendation.

25 Miles Per Hour

Hawthorne Drive is a narrow residential street with street geometry problems, including horizontal and vertical curvature, several access points, and on-street parking. The daily traffic volumes are less than 100 vehicles per day and the 85th percentile speed is 24.0 mph. Currently, Hawthorne Drive does not have a posted speed limit which means that the statutory speed limit of 35 mph is

in effect.

1. Hawthorne Drive, from Hampden Road to NC 81 (Swannanoa River Road).

East Hawthorne Drive is a narrow residential street with street geometry problems, including horizontal and vertical curvature, several access points, and on-street parking. The daily traffic volumes are less than 150 vehicles per day and the 85th percentile speed is 29.4 mph. Currently, East Hawthorne Drive does not have a posted speed limit which means that the statutory speed limit of 35 mph is in effect.

2. East Hawthorne Drive, from Fairway Drive to NC 81 (Swannanoa River Road).

Wolfe Cove Road is a narrow residential street with street geometry problems, including horizontal and vertical curvature, several access points, and on-street parking. The daily traffic volumes are less than 150 vehicles per day and the 85th percentile speed is 33.1 mph. Currently, Wolfe Cove Road has a posted speed limit of 30 mph. In order to mitigate potential traffic problems along Wolfe Cove Road as a result of a new development known as Bartram's Walk, the developer agreed to install traffic calming devices (*speed humps*) along Wolfe Cove Road.

3. Wolfe Cove Road, from SR 2053 (Beaverdam Road) to its dead-end, a distance of 0.61 miles from SR 2053 (Beaverdam Road).

Although not directly referenced in the Asheville City Development Plan 2025, it can reasonably be argued that establishing speed limits along city-maintained streets can positively affect the quality of life for its citizens. The following quote listed in *A Pattern Language* (Christopher Alexander, et al; 1977) illustrates the importance of speed control: "*Nobody wants fast traffic going by their homes.*" (Page 119, The Asheville City Development Plan 2025).

The total estimated installation cost to the City is about \$1,000.

The Transportation & Engineering Department requests that City Council approve the ordinance amending speed limit changes along Hawthorne Drive, East Hawthorne Drive, and Wolfe Cove Road.

ORDINANCE BOOK NO. 24 – PAGE

E. BUDGET AMENDMENT TO REFLECT REIMBURSEMENT FROM THE U.S. DEPT. OF HOUSING & URBAN DEVELOPMENT FOR THE VETERANS MEMORIAL AT MEMORIAL STADIUM RESTORATION AND CONSTRUCTION

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

F. RESOLUTION NO. 08-107 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH CINCINNATI SYSTEMS INC. FOR REPLACEMENT OF THE PARKING ACCESS AND REVENUE CONTROL SYSTEMS IN THE THREE MUNICIPALLY-OWNED PARKING GARAGES

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Cincinnati Systems Inc. for replacement of the Parking Access and Revenue Control Systems (PARCS) equipment in the three municipally owned parking garages.

Approximately 580,000 parking patrons utilized the Civic Center, Rankin Avenue, and Wall Street parking garages during 2007. Parking access and revenue control equipment controls the entry and exit gates, dispenses entry tickets, operates the FULL signs, accepts after hours payments, accepts payments at the exit booths, and provides operational and revenue management reports. The current equipment is approximately seven years old. And, it has been experiencing mechanical and or software failures at an increasing rate. The auto-cashier only accepts cash or coupons and can't charge variable rates after hours. The equipment has been planned for replacement for several years. This was delayed when the proposed Battery Park parking garage was not built.

On February 1, 2008, Parking Services requested proposals for the replacement of existing PARCS equipment and software. Included in the request were requirements for training of staff, service response time, and maintenance support. Two companies, Cincinnati Systems, Inc. distributor of Amano/McGann gate equipment and operating software, and Southern Time, distributor of Federal/APD gate equipment and operating software responded to the proposal. While more respondents would have been preferable, these two companies comprise 66% of the PARCS equipment installations in the Southeastern Region as defined by the International Parking Institute. Both distributors and both equipment manufacturers provide good equipment and service that

meets the requirements of the City of Asheville as reported by the City's consultant Carl Walker, Inc. Both systems are expandable when the City adds additional parking facilities.

Cincinnati Systems, Inc's proposal had a total cost of \$356,820.00. Southern Time's proposal had a total cost of \$368,864.87. Both proposals are within the estimated range that was in the FY 2007/2008 budget.

Installation of equipment and operating systems should take no more than three months. Since Cincinnati Systems, Inc are our current supplier disruptions due to cutting and installing vehicle loops in the concrete should be minimal as they currently exist and should only require minor modifications if any. Cincinnati Systems, Inc will remove existing equipment as they factored in a trade-in allowance.

This project complies with the Strategic Operating Plan's priority areas of Economic Development and Community Building by upgrading the capabilities of the revenue generation of the parking garages and improving customer service.

Pros:

- Project improves customer service by providing a greater variety of payment options e.g. credit/debit cards and smart cards, for parking patrons.
- Project will provide the City with the opportunity to charge variable rates for after hours and reserved parking plans.
- Equipment and operating software is an upgrade of the current Amano brand equipment and McGann software utilized in the garages. This project will minimize the impact of parking patrons by not having to be reissued cards.
- The equipment and software selected is the same as what Buncombe County has selected for their new deck(s) providing greater opportunities for interconnectivity or sharing of parts in emergencies.
- The vendor, equipment, and software is the same as the systems used for access control at City Hall, the City employee parking lots, and the Public Works building.

Cons:

- Minor disruptions, not to exceed four hours, to parking patrons when the new equipment is installed in the exit lanes.

There is no adverse fiscal impact due to this project. Funds for the replacement of the PARCS equipment were authorized in the Fiscal Year 2007/2008 Operating Budget for Parking Services and are still available.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign a contract with Cincinnati Systems, Inc. for replacement of the Parking Access and Revenue Control Systems (PARCS) equipment in the three municipally owned parking garages.

RESOLUTION BOOK NO. 31 – PAGE 180

G. RESOLUTION NO. 08-108 - RESOLUTION APPOINTING CESAR ROMERO TO THE CITIZENS-POLICE ADVISORY COMMITTEE

Summary: Mr. Craig Young, west representative, has resigned as a member of the Citizens-Police Advisory Committee, thus leaving an unexpired term until June 30, 2008.

At the May 13, 2008, City Council meeting, a motion was made to appoint Mr. Cesar W. Romero, 43 Evelake Drive, Asheville, North Carolina, as the west representative on the Citizens-Police Advisory Committee, to serve the unexpired term of Mr. Young, term to expire June 30, 2008, and then a full three-year term, term to expire June 30, 2011, or until his successor has been appointed.

RESOLUTION BOOK NO. 31 – PAGE 181

H. RESOLUTION NO. 08-109 - RESOLUTION SETTING A PUBLIC HEARING ON THE CITY'S INTENT TO WITHDRAW FROM A GRANT AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES LAND AND WATER CONSERVATION FUND FOR CONSTRUCTION AT AZALEA PARK

Summary: The consideration of a resolution setting a public hearing on June 10, 2008, of the City of Asheville's intent to withdraw from a grant agreement with North Carolina Department of Environment and Natural Resources (DENR) Land and Water Conservation Fund for construction at Azalea Park.

The City of Asheville informed DENR of its intent to withdraw from the DENR Land and Water Conservation Fund contract for Azalea Park LWCF #37-010201/DENR #PO7082 for \$91,423. A public hearing is required to satisfy the requirements for

withdrawal from the agreement. To date, no LWCF reimbursement payments have been requested or received by the City of Asheville for this project. Upon completion of the public hearing, authorization to withdraw from the agreement will be requested of Council.

Original cost estimate for the LWCF project were \$182,846 for a trail and wildlife interpretive area at the lake, a river overlook and a picnic shelter. Since the acceptance of the grant, no other funds have been budgeted to support the project. Additionally, the City of Asheville's capital priorities in the Parks, Recreation and Cultural Arts Department have changed and this project and the additional capital budget to support it is not a priority at this time nor will it be for a few more years.

The City is also in the process of developing a new Parks, Recreation and Cultural Arts Department master plan which will set the pace for capital projects for the next few years. The recommendations from the master plan will determine how the build out of Azalea Park fits into the overall vision.

The Azalea Park Land and Water Conservation Fund construction ties in with the Strategic Operating Plan by addressing the Growth, Development & Land Use Priority area; supporting multi-modal programs and the Natural and Built Environment Priority; develop programs to protect key environmental features.

This action complies with the Azalea Park Master Plan by recognizing cost constraints related to the project.

Pro:

- Holding a public hearing satisfies DENR's requirement prior to the withdrawal from the agreement.

Con:

- None.

There is no fiscal impact.

City staff recommends City Council set a public hearing on June 10, 2008, in order to satisfy North Carolina Department of Environment and Natural Resources' requirement to complete the City of Asheville's withdrawal from the LWCF agreement.

RESOLUTION BOOK NO. 31 – PAGE 182

I. RESOLUTION NO. 08-110 - RESOLUTION MODIFYING THE 2008 CITY COUNCIL MEETING SCHEDULE

Summary: The formal meeting of the City Council scheduled for Tuesday, July 8, 2008, is hereby cancelled.

RESOLUTION BOOK NO. 31 – PAGE 183

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

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

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

A. APPROVAL OF THE MINUTES OF THE FORMA MEETING HELD ON MAY 13, 2008, AND THE WORKSESSION HELD ON MAY 20, 2008

Councilwoman Cape asked for the opportunity to make revisions to the May 13, 2008, meeting.

Mayor Bellamy said that the minutes would be amended and voted on at the June 10, 2008, meeting.

Councilwoman Cape moved to approve the May 20, 2008, minutes. This motion was seconded by Councilman Mumpower and carried unanimously.

C. RESOLUTION NO. 08-106 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MODIFY THE HOUSING TRUST FUND TERMS ORIGINALLY AGREED UPON BY MOUNTAIN HOUSING OPPORTUNITIES FOR THE PROJECT KNOWN AS CLINGMAN LOFTS

At the request of Mayor Bellamy, Vice-Mayor Davis moved to recuse Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Jones and carried unanimously.

At this time, Mayor Bellamy turned over the gavel to Vice-Mayor Davis to conduct the meeting.

Summary: The consideration of a resolution authorizing the City Manager to modify the Housing Trust Fund (HTF) terms originally agreed upon by Mountain Housing Opportunities (MHO) for the project known as Clingman Lofts.

In July 2007, Council approved a \$250,000 HTF loan to MHO for the development of nine (9) affordable one-bedroom units in its Clingman Lofts project on Clingman Avenue. MHO has now requested a reduction in the number of units from nine to eight. The eight units are located on the first and second floors and are priced at \$120,000. The ninth unit is on the third floor where a vaulted ceiling and better views create additional value of approximately \$15,000. MHO feels that the affordable sales price of \$120,000 is substantially below market value and that they would in effect be gifting \$15,000 in instant equity if the unit is sold at this price.

If approved, the HTF loan amount per unit would increase from \$27,777 to \$31,250.00. This is below the maximum of \$50,000 per unit. Due to HOME funds invested in the project, the total number of units sold to low income borrowers will remain the same. The request was recommended for approval by the Housing and Community Development Committee on April 21st, 2008.

This action complies with the Strategic Operating Plan in that the project is supportive of the City's goal of providing safe and decent affordable housing units to the citizens of Asheville.

The project addresses the Consolidated Housing & Community Development Plan in that it addresses the Plan's priorities of increasing the housing stock, promoting homeownership, building quality, energy-efficient housing, and coordinating development with transportation and jobs.

Pros:

- Allows the developer to recognize true market value for the ninth unit.
- Prevents the homebuyer from realizing substantial instant equity subsidized by the HTF.
- HOME funds are also invested in the project and will guarantee a total of eleven units sold to buyers below 80% area median income, with affordability assured for 10 years.
- MHO has a long track record in developing affordable housing in compliance with funding agreements.

Cons:

- Decreases the number of the most affordable units in the development from nine to eight.
- Creates an unfavorable precedent for renegotiating terms that were part of the loan approval process.

There is no fiscal impact. Funds for the project have been previously appropriated.

Staff recommends adoption of a resolution authorizing the City Manager to modify the terms of the Housing Trust Fund loan for Clingman Lofts from nine (9) affordable units to eight (8) affordable units.

Councilwoman Jones moved for the adoption of Resolution No. 08-106. This motion was seconded by Councilman Newman and carried on a 4-1 vote, with Councilman Mumpower voting "no" (Mayor Bellamy excused).

At this time, Vice-Mayor Davis returned the gavel to Mayor Bellamy to conduct the meeting.

RESOLUTION BOOK NO. 31 – PAGE 179

E. ORDINANCE NO. 3621 - BUDGET AMENDMENT TO REFLECT REIMBURSEMENT FROM THE U.S. DEPT. OF HOUSING & URBAN DEVELOPMENT FOR THE VETERANS MEMORIAL AT MEMORIAL STADIUM RESTORATION AND CONSTRUCTION

Summary: The consideration of a budget amendment, in the amount of \$247,500, to amend the budget of Veteran's Memorial restoration and construction, reflecting a reimbursement grant from the U.S. Department of Housing and Urban Development – Economic Development Initiative for restoration and construction costs up to \$247,500.

The U.S. Department of Housing and Urban Development – Economic Development Initiative awarded the City of Asheville

a grant of up to \$247,500 for the Veteran's Memorial restoration and construction. The funds will be used to renovate the Veteran's Memorial.

The plan includes restoring the original memorial, creating a new memorial, and landscaping.

The City of Asheville has received an executed grant agreement and the Authority to Use Grant Funds from the U.S. Department of Housing and Urban Development.

This action complies with the Strategic Operating Plan by addressing the Critical Services and Infrastructure Priority area with the goal of providing safe, well-maintained, and affordable programs and facilities.

This action complies with the site master plan for Memorial Stadium and Mountainside Park by leveraging the City's existing capital funds allocated for renovation and construction of the Veteran's Memorial.

Pros:

- Leverages the City's existing capital funds allocated for the renovation and construction of the Veteran's Memorial
- Advances the project's progress toward completion
- Provides a meaningful recognition for the region's veteran's

Con:

- The new Memorial will require some additional ongoing maintenance, thus requiring additional operational funding once on-line.

The budget amendment will increase the CIP budget by \$247,500.

City staff recommends City Council adopt the budget amendment, in the amount of \$247,500, to amend the budget to reflect the receipt of an executed grant agreement for reimbursement of up to \$247,500 from the U.S. Department of Housing and Urban Development – Economic Development Initiative for restoration and construction costs at Veteran's Memorial at Memorial Stadium.

Councilman Mumpower, Chair of the Memorial Stadium Restoration Committee, would have to speak against the motion accepting this money as we are accepting money from the federal government which has roughly a \$10 Trillion deficit. He is personally behind restoring Memorial Stadium, but as a member of Council, he would have to speak against the motion.

Mayor Bellamy explained how these these funds were applied for many years ago and delayed for passage at the federal level. The money was part of the federal legislative agenda.

Councilman Mumpower said that even though this was money Congressman Taylor raised for the City, it's still taxpayer dollars.

In response to Vice-Mayor Davis about the project moving forward, Councilman Mumpower said that right before Hurricane Katrina we had some problem with monies not coming forward in the athletic component of the facility - which had nothing to do with Memorial Stadium. Staff is making an effort to create a new plan and we're trying to press forward. He said the money will be well spent, but he has a physiological difference of where we are getting it from.

Mayor Bellamy said this is not for bricks and mortar for Memorial Stadium, but it's for the memorial at the stadium. This will go towards the Plan AI Kopf has put together.

Councilman Mumpower responded to Councilman Newman when he asked about private dollars for the project.

Councilman Newman said that Council has supported the veterans' memorial at City-Council Plaza which had significant fundraising efforts behind it. However, since Councilman Mumpower is Chairing this effort for a veterans' memorial at Memorial Stadium and is voting against the motion, he would vote against it as well.

Vice-Mayor Davis moved for the adoption of Ordinance No. 3621. This motion was seconded by Councilwoman Cape and carried on a 4-2 vote, with Councilman Mumpower and Councilman Newman voting "no."

After discussion initiated by Councilwoman Jones, it was the consensus of Council, at Mayor Bellamy's concurrence, that after the budget process staff is to update Council on the Memorial Stadium Restoration Plan (including the amount raised and what is in hand), along with minutes from where the Plan and the veterans memorial at Memorial Stadium was discussed.

III. PRESENTATIONS & REPORTS:

IV. PUBLIC HEARINGS:

A. RESOLUTION NO. 08-111 - RESOLUTION REGARDING PROPOSED INCORPORATION OF THE TOWN OF SWANNANOA

RESOLUTION NO. 08-112 - RESOLUTION SUPPORTING THE WESTERN BOUNDARY OF THE TOWN OF SWANNANOA FOLLOW THE 28805 ZIP CODE (IF THE TOWN OF SWANNANOA IS CREATED)

Interim Planning & Development Director Shannon Tuch said that on May 8, 2008, the Asheville City Council considered a resolutions proposed by the Task Force for Incorporation for the Town of Swannanoa and a separate resolution offered by staff. During this meeting City Council received public comment and deliberated on the proposed resolutions but ultimately decided to table the matter for two weeks at which time it was hoped that: (1) The language of the resolution would be strengthened to better reflect general concerns and desire for a referendum, and (2) That the western boundary be further explored to better protect Asheville's interests for a discussion regarding regional partnerships for planning and growth management issues.

Staff met with representatives on Monday, May 19, where the language in the resolution was modified to the satisfaction of the group and is being presented to Council for their consideration.

Also discussed were the concerns regarding the location of the western boundary with the Task Force representatives reiterating their desire to not exclude critical cultural sites (historic cemetery) and interested landholders. At this point in time, no changes to this western boundary are being offered. In considering this position, staff again recognizes that there is little impact on Asheville's existing fiscal state as a result of one boundary versus another; however, it is also recognized that a more conservative boundary (as proposed by staff) leaves more opportunity for future agreements.

Councilman Newman asked if Council adopted the proposed resolution and added the following two caveats, would the Joint Legislative Commission on Municipal Incorporation view that as a negative recommendation: (1) the zip code boundary be the western boundary; and (2) very large rural tracks of land upon which there are no proposed developments be excluded from the proposed incorporation area.

City Attorney Oast said that Council can't redraw the boundaries of what is being proposed for incorporation. It was his opinion that Council had to vote on what the Task Force has presented to Council. He felt that Council could either approve the resolution or not approve it. The resolution before Council does express Council's concerns as follows (a) That the size of the area proposed for incorporation will present practical difficulties in delivering urban services; (b) That the density and character of the area proposed for incorporation is predominantly rural and does not reflect the intent of incorporation; and (c) Incorporation affects the City of Asheville's opportunities for improved fiscal health. He said that Council could, in a separate communication, let the Joint Legislative Committee know that Council could support the incorporation, without as many reservations, an incorporation that followed the zip code boundaries on the western edge.

Councilman Newman clarified that Council could adopt a separate resolution or a letter to the Joint Legislative Committee on Municipal Corporations expressing this Council's preference that the western boundary being the zip code boundary and not what was presented by the Swannanoa Incorporation Task Force.

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

Councilman Newman moved to adopt Resolution No. 08-111 and that (b) be amended to read: "(b) That the density and character of the area proposed for incorporation is predominantly rural and does not reflect the intent of incorporation and that we encourage the Swannanoa Incorporation Task Force to consider excluding large rural properties on which there is not development planed at this time." This motion was seconded by Councilman Mumpower.

There was a brief discussion about public comment since public comment was taken on May 13, 2008. City Attorney Oast noted that this is an issue that a public hearing is not required.

Mayor Bellamy opened the public hearing at 5:47 p.m. and asked that comments be limited to only the new language proposed by Councilman Newman and seconded by Councilman Mumpower.

The following individuals spoke against the Asheville's resolution supporting the Town of Swannanoa's incorporation for several reasons, some being, but are not limited to: the acreage of the incorporation is too large; there will be an increase in property taxes; there will be more rules and less freedom; 52% of the land is open land; if the Council has questions, they should vote no for the incorporation; there is nothing in the General Statutes that will require a referendum; owners of 200 acres close to the Bee Tree Watershed want to be excluded from the incorporation; proposal is unreasonable and over-reaching; the proposed budget is not realistic; increase in taxes may make it impossible for owners to keep their land; large property owners will have to pay taxes on services they don't need; suggest smaller incorporation area near Highway 70; even small property owners who live far from Highway 70 should have the opportunity to be excluded from incorporation; some signers of the incorporation petition signed due to the threat of annexation by Asheville; there are many people who signed the incorporation petition who are asking that their names be removed; and consequences of incorporation on farm and forestry programs can be catastrophic:

Ms. Bonnie Vess
Mr. Eric Gorney, Swannanoa resident representing Swannanoa Truth
Mr. W. Louis Bissette, Jr., attorney representing Nancy Dugan and Colin Roberson
Mr. Gene Loomis, owner of Gene Loomis Harley Davidson
Mr. Arnold Ferguson, large land owner
Mr. Doug Thigpen, resident and owner of six acres in Swannanoa,
Ms. Hoffman, Swannanoa resident
Mr. Brett Vess
Ms. Nancy Dugan

The following individuals spoke in support of the Asheville's resolution supporting the Town of Swannanoa's incorporation for several reasons, some being, but are not limited to: residents will be given a voice; the owners of the large tracks will still have to travel through Swannanoa to get to anywhere; it would show favoritism to allow property owners who own 5, 4 or 3 acres to opt out; over 50% of the proposed incorporation area is developed and by law it only needs to be 40%; the issue of farm land and forestry would be an issue that would come up during zoning; and there was no representation from Swannanoa on the US 70 Corridor Study:

Mr. Robert Kelly, owner of 237 acres
Mr. Steve Hansel
Mr. Ryan Hildebrand
Mr. Jerry Pope, owner of 1/2 acre of land in Swannanoa

Mr. Geoffrey Bullock and Ms. Carol Groben, representing the Swannanoa Incorporation Task Force, reviewed the following letter with Council: "We would like to use this opportunity to offer some clarification and elaboration around a few issues that have appeared to cause confusion or perhaps, been misinterpreted. The issues that we have identified being relevant to that purpose include: (1) How we came to determine our boundaries; (2) the considerations resulting in our revised western boundary; (3) the desire on the part of this council for a long-term annexation agreement; and (4) the call for a referendum.

"As we have identified in our earlier written correspondence to this council, the boundaries committee consisted of 10 permanent members and that many again contributing members. The committee worked for many months and explored numerous options. Our eventual boundaries were vetted by the community at large in community meetings and then endorsed by the Executive Board. There were several factors that contributed to the determination of our original boundaries. While we did start with the fire district (encouraged by our fire chief and the Institute of Government) there were several scenarios considered that deviated significantly from the fire district. As we have noted, the historical considerations, the unique topography and the resulting infrastructure, communal interests, and the self identity of residents were all concerns. When due consideration was given to all these other relevant factors, the general outline of the fire district continued to present itself as a natural and logical framework. There are some areas of the fire district that have been excluded. For instance, there is a small residential area in the upper Northwest corner that was excluded, because service delivery is impractical. The federal lands to the north were excluded for obvious reasons. There were also two large tracts excluded, about which there seems to be some misunderstanding. These would be the areas of the Cove and Warren Wilson College. These areas were excluded primarily because the fire district boundary split these very large tracts that are owned and utilized by nonprofit institutions. It was determined impractical and undesirable to have properties of this sort split by a town boundary and therefore, it was decided to remove them in total. We would point out that this did not involve a negotiation or an "opt out" arrangement. We did have one meeting with Warren Wilson to assess if they had a strong preference for being included and ofund their response to be ambivalent. In order for us to proceed with our process – and because we had some concern regarding the student body being a significant number of "transient" voters – we decided to exclude the campus.

"Moving on to the western boundary; as you know we have met twice with your planning department and have made an effort to incorporate their input and concerns into our proposal. We did make a modest modification from our original boundary in

the area that appeared to us to have the greatest potential to impact the growth of Asheville – specifically the irregular point that overlapped with Asheville's easternmost point. As Mrs. Tuch indicated in her presentation to you on May 13, the planning department had suggested we look at the zip code line as a possible boundary. We did give this thorough consideration within the context of our overall goals for the town of Swannanoa and original criteria for determining boundaries. We did not have a fundamental objection with foregoing this relatively small amount of land; however we also have heard from several people in Swannanoa that they do not consider this "just land". Specifically as has been noted previously, the Smauel Davidson monument is located in this area, along with a community Cemetery. There are many descendants of the Davidson family in Swannanoa and he is an important historical figure to many; perhaps comparable to the importance of Thomas Wolfe to many in Asheville. Additionally, we heard from residents living in that area about their desire to be included in the town. We also noted that these properties are being served by the Swannanoa fire department and currently paying taxes for that service. And although postal delivery to that area comes from an Asheville office, we do not perceive that there are any intrinsic benefits to delivery of services coming from the west or any impediments to them being delivered effectively by Swannanoa, since all access to these properties is from Highway 70. These considerations which support the inclusion of this area into Swannanoa, combined with feedback from the planning department that this area does not significantly impact the potential interests of Asheville, have led us to deem that this is an appropriate and reasonable western boundary.

"When establishing our boundaries we have attempted to be inclusive of those areas and residents that appeared to fit within a town of Swannanoa. We have also done that with the hope and anticipation that any need or consideration of annexation can be avoided for a long time to come. This leads to the wish on the part of this council for a formalized annexation agreement. As we have stated previously, we recognize and support the need for regional planning and your need to take this into consideration. However, we have also experienced ourselves sometimes feeling as if we are in a "Catch-22" regarding this issue. As we have shared with the council, since we are not an elected body we believe it is inappropriate for us to establish policy beyond the bare minimum necessary to make our application with the state. Therefore, it has not been possible to create a formal agreement between Asheville and Swannanoa regarding annexation, since "Swannanoa" does not yet exist. We have tried to provide all assurances that are within our ability, including offering an agreement that while the members of the current Executive Board serve as an interim town council they will not undertake any action toward involuntary annexations and also to provide an earnest recommendation that the first elected town council meet with Asheville as soon as possible to address this issue. We also have felt ourselves in a Catch-22 on this issue, because --- while we appreciate Asheville's need for caution in this area – we genuinely cannot imagine any scenario in which a new town of Swannanoa would consider any involuntary annexation for many years to come.

"We hope that the council will keep in mind that with our proposal we are talking about a newly formed town in its infancy. Our proposed formal services are certainly modest in comparison to a middle size and long established city such as Asheville. We do recognize it is a tremendous undertaking to become a municipal entity; but we also recognize the current needs and benefits to the citizens of Swannanoa are significantly different from the needs and benefits the citizens of Asheville expect to receive from their city government. Increased police presence, street lighting, and road maintenance are all services that we believe will be improved to the benefit of our residents when they are subject to greater local control. But, we also look forward to having access to informal services and funding that are granted only to established municipalities, especially related to revitalization and community enhancement. We also look forward to being a bona fide participant in the various forums addressing our area's regional planning and growth management.

"Lastly, we would speak briefly to the concerns about a referendum. We would note that the task force did not formally address this issue until February of this year. We have recognized that the decision on a referendum resides solely with the general assembly and therefore we had simply not addressed the issue. However, as you know there are members of our community who do not favor incorporation. This is to be expected with any issue of this magnitude, and we certainly respect the opinions of those who oppose incorporation – even if we have not always considered the actions or statements of some to be appropriate. Nonetheless, we are talking about forming a town, which includes addressing differences of opinion by utilizing representative elected government. Consistent with that thinking, it makes perfect sense to us that the establishment of the town should also be based on an election process confirming that the majority of residents are in favor of this very significant undertaking. Obviously, we believe the majority of residents do favor incorporation or we would not have invested so much of our time and energy over the past 18 months. However, if we are mistaken and a majority of residents do not favor incorporation, we recognize that to be a strong indication that a Town of Swannanoa as currently proposed would be untenable. Therefore, we fully support holding a referendum and we will include this request in our application to the state.

"We thank you for your consideration of our timeframe and for making room tonight in your busy agenda to consider this resolution again, so that we may proceed with our efforts. Obviously, we hope you will find yourselves in favor of this resolution and that Asheville and Swannanoa will be cooperative neighbors into the future."

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

Councilman Newman clarified his motion in that he just didn't mean that there should be large tracks of land removed from the incorporation. He felt that the large rural areas (which could include large tracks and smaller tracks) should also be excluded from this incorporation. If there is a small tract of land five miles from the town, it shouldn't be incorporated. He didn't want to discriminate against small property owners, but wanted to make the point that incorporating these wilderness tracks of land up on the mountain sides into a proposed town is not the right thing to do. He clarified that his motion was for large rural areas, rather than large properties. As the member of Council who seconded the motion, Councilman Mumpower supported the clarification.

Councilwoman Cape said that even though she would like to be a good neighbor to Swannanoa, she could not support the size of the proposed incorporation, the inclusion of the rural areas or the tracks of land which are distant from the center of the town. She understood City Attorney Oast say that Asheville either has to say yes or no to the size and boundaries presented to us. Even though she is not going to support the motion, she would like Swannanoa to come back with boundaries for a smaller town that Asheville can give their 100% support.

Councilman Mumpower felt that Asheville has the reputation for laying a heavy hand on our neighbors and we are trying hard not to do that. He felt the resolution raises concerns that we have, provides for a referendum and keeps us out of the business of telling Swannanoa residents what they should or should not be going. He felt that was a good healthy process.

Vice-Mayor Davis felt the resolution is contradictory - on one hand we say we approve the incorporation and on the other hand we express concerns about the size of non-municipal like land. This is a huge boundary that has little semblance of a town. He felt there should be a Town of Swannanoa, but not this size.

Mayor Bellamy said that this will have in impact on the City of Asheville. Every two years Council adopts a Resolution of Consideration regarding annexation and east Asheville was not an area that was looked at, mostly because it was not developed. The criteria for annexation is different than the criteria for incorporation. It will, however, impact our sales tax. She felt it's important to convey to our neighbors in Swannanoa that this is good will. This is our way of reaching out to say we support you but we do have some concerns and one main concern is the size of the proposed incorporation. She will support this resolution as she supported the proposed incorporation of Leicester because of good will. She felt that Swannanoa Incorporation Task Force should listen to all their neighbors and take their concerns under consideration. She noted that the tax rate will adversely impact some of the residents because the tax rate will be added onto the existing county's tax rates. She also asked for re-consideration of the boundary.

The clarified motion made by Councilman Newman and seconded by Councilman Mumpower carried on a 4-2 vote, with Vice-Mayor Davis and Councilwoman Cape voting "no."

Councilman Newman moved to support, if there is a new township of Swannanoa created, the western boundary to follow the 28805 zip code. This motion was seconded by Councilwoman Jones.

Councilman Mumpower would speak against the motion in that Asheville's effort to try to stay out of micro-managing Swannanoa residents' affairs and raise our concerns has been done through the first resolution adopted.

Councilwoman Cape asked for a friendly amendment to the motion in that the northern boundaries of the proposed Town of Swannanoa be looked at also to exclude rural areas. Councilman Newman supported the amendment; however, Councilwoman Jones (who seconded the motion) did not. Councilman Newman then withdrew his support for the friendly amendment.

The motion made by Councilman Newman and seconded by Councilwoman Jones carried on a 4-2 vote, with Councilwoman Cape and Councilman Mumpower voting "no."

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B. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR AN AT&T MOBILITY TELECOMMUNICATION TOWER LOCATED AT 555 BREVARD ROAD

ORDINANCE NO. 3622 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR AN AT&T MOBILITY TELECOMMUNICATION TOWER LOCATED AT 555 BREVARD ROAD

City Clerk Burleson 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.

City Attorney Oast also said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:34 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 an AT&T mobility telecommunication tower located at 555 Brevard Road (Attachment to City Exhibit 3 - Location Map). This request is for a review of a proposed telecommunications tower at 555 Brevard (Oakview) Road, which is considered as a Conditional Use pursuant to Section 7-8-20(e) of the Unified Development Ordinance (UDO).

The project site consists of a single parcel, 17.84 acres in size. The property is zoned Commercial Industrial (CI) and is surrounded by RS-4 to the west and Highway Business (HB) and CI to the south and east (Attachment to City Exhibit 3 - Aerial Map). Interstate 40 provides the northern boundary. The parcel is owned by Progress Energy and contains a number of structures. The applicant will be leasing a small area of the parent parcel for the tower.

The proposed monopole tower will be 100 feet in height (maximum allowed by the UDO) and will be constructed adjacent to an existing office building and vehicular use area. The associated equipment will be 10 feet in height (Attachment to City Exhibit 3 - Site Survey). The pole and equipment ("proposed tower compound area") will be enclosed by a chain link fence topped by barbed wire, per the ordinance. As required by the UDO, the tower is designed to accommodate at least one other user for co-location.

The applicant is requesting a modification to the required landscaping (Attachment to City Exhibit 3 - Site Landscape Plan). The code requires that the tower shall be buffered from adjacent properties by a 20 foot Type A buffer, which the applicant intends to install around three of the four sides of the tower compound area (east, south and west). Directly to the north of the tower site is a parking lot from which the tower is accessed. The modification request is to eliminate the buffer on that northern side. Additionally, the applicant will be requesting tree credits from existing vegetation to count towards a portion of the required bufferyard plantings.

As part of the special requirements applied to Conditional Uses in the CI zoning district per Sec. 7-16-2(d)(3), the project must meet a number of conditions for telecommunication towers including those technical conditions addressed in the April 21, 2008, Technical Review Committee (TRC) staff report (which will be met). In addition to the technical conditions, the following non-technical standards must also be met:

- f. Applicants shall first be encouraged to consider properties owned by the City or Buncombe County before considering private properties.

The applicant has indicated that they considered properties located by the City of Asheville, Buncombe County and their instrumentalities, before Progress Energy made its property available to AT&T, and "found no such public properties adequate to accommodate the proposed monopole facility."

- i. No telecommunication facility shall interfere with usual and customary radio and television reception.
The applicant possesses a current FCC license and no interference with other radio or television transmissions is expected.
- t.7. Generators may not be used as a primary electrical power source.
Generators will not be used as a primary electrical power source.
- t.13. The City Council may require any other conditions deemed necessary or desirable to ameliorate the impact of the tower on

the adjacent properties and uses.

Additional conditions to be proposed as deemed necessary by Council.

- u. An annual wireless telecommunication facility permit shall be required for each wireless telecommunication facility located in the city.
In order to annually renew this permit the applicant must certify the information described in Sec. 7-16-2(d)(3)(u)1-6.

- v. Conditional use permits for telecommunication towers shall be valid for an initial period of five years.
In order to review the permit for an additional five year period, the applicant must submit a renewal request within 60 days prior to the expiration of the initial permit period. A review shall be conducted to determine whether and under what conditions the conditional use may be extended for successive five year periods. Additional details of this renewal process are described in Sec. 7-16-2(d)(3)(v).

- w. A conditional use approval for a telecommunication tower shall become null and void if the facility is not constructed and placed in service within one year of the date of approval.
Approval will become null and void after a period of one year, however, the conditional use approval may be extended for a period of 6 months if substantial construction has commenced before the end of the initial year. If construction has not begun before the end of the initial year, re-application for a new conditional use permit would be required.

This project was approved with conditions by the TRC on April 21, 2008. Per Section 7-5-5(d)(3)a. of the UDO, this type of Conditional Use request is not required to undergo review by the Planning & Zoning Commission and is instead forwarded to the City Council directly. No communication has been received regarding this proposal.

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

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
The 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 project incorporates retaining existing vegetation adjacent to the tower site and proposes a monopole construction that should be as minimally obstructive as possible. There are no significant natural or topographic features on the site that pose a conflict with the project. In addition, the installation is extremely limited in its footprint and will require an extremely small amount of site disturbance with little to no grading or ground disturbing activity.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
The site is currently used for utility distribution by Progress Energy and this use is compatible (as a telecommunication utility). Many of the surrounding parcels are vacant. Although there is a residentially-zoned neighborhood adjacent to the east, the tower is a distance of approximately 731' feet away. There are a small number of residentially-used properties nearby to the west, although zoned HB, and the tower is a distance of approximately 204' away (the ordinance requires a distance of 50'). The tower should not substantially injure the values of adjacent 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 area surrounding this proposal is zoned Commercial Industrial (CI) and Highway Business (HB) and is located just off the highway interchanges of I-240, I-40 and I-26. The proposed use is appropriate in this zoning district and compatible with the other utility services being offered on this site by Progress Energy. There are residences on nearby parcels (zoned HB to the east and RS-4 to the east) however the proposed development well exceeds distance requirements as set forth in the ordinance.

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

The **Asheville City Development Plan 2025** thoroughly describes the need to accommodate and encourage new technology as a critical factor in sustainable economic development; it also states that the City should pursue compatible infill development, while ensuring that sufficient infrastructure capacity exists or will be provided to accommodate this development. This proposal places a telecommunication tower (which is increasingly considered as a necessary utility rather than a convenience) on an existing utility site in a zoning district where this type of use is allowed.

Telecommunication towers can be considered similar to utilities. This proposal supports Council's priority area of "Critical Services & Infrastructure" and indirectly supports goals for "Economic 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 proposed development is located near transportation facilities (I-26 and I-40) and other utilities appear adequate. The Technical Review Committee did not reveal any issues for water supply, fire and police protection, waste disposal, etc.

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

The proposed tower installation is not expected to cause any increase in traffic to the site other than periodic maintenance visits.

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

Pros:

- Tower designed for co-location, which eliminates the need for additional towers in the future.
- Should result in improved cellular service for Asheville's AT&T Mobility customers.
- Proposal can be considered as a utility and is to be placed on an existing utility-based parcel.
- The installation is extremely limited in its footprint and will require an extremely small amount of site disturbance with little to no grading or ground disturbing activity.

Con:

- None noted.

Staff recommends approval of the Conditional Use Permit with the requested landscaping modification, inclusive of the conditions listed below and as outlined in the TRC staff report.

Mr. Jonathan Yates, representing the developer, spoke in support of the conditional use permit noting that they looked for several years and believe they found the best site.

In response to Mayor Bellamy, Interim Planning & Development Director Shannon Tuch said that staff did not consider a balloon test in this situation. Balloon tests are used more commonly for tall buildings to try to determine the visual impact. It wasn't done at this site because the taller the pole gets, the thinner it gets and it starts to fade into the sky.

After rebuttal, Mayor Bellamy closed the public hearing at 6:41 p.m.

Councilwoman Jones moved for the adoption of Ordinance No. 3622, adopting the proposed master plan for the conditional use permit for an AT&T mobility telecommunication tower located on 555 Brevard Road, with landscape modification subject to the conditions recommended by City staff and subject to the following standard conditions: (1) The project shall comply with all conditions outlined in the TRC staff report dated April 21, 2008; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 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; and (4) The building design, construction materials and orientation on site must comply with the conceptual. This motion was seconded by Councilman Mumpower and carried unanimously.

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C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL ZONING ORDINANCE FOR PROPERTY LOCATED AT 1741 HENDERSONVILLE ROAD REGARDING SIGNAGE FOR THE WEIRBRIDGE VILLAGE PROJECT

When Councilman Mumpower asked for the reason for the continuance, Interim Planning & Development Director Shannon Tuch said that the applicant was exploring their signage options and they came up with a plan, but after discussing some of staff's concerns, they requested more time to further refine their plans.

At the request of the developer, Councilman Mumpower moved this public hearing until June 24, 2008. This motion was seconded by Councilwoman Cape and carried unanimously.

D. PUBLIC HEARING TO CONSIDER REZONING A PORTION OF ONE LOT ON SAND HILL ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL DISTRICT

ORDINANCE NO. 3623 - ORDINANCE TO REZONE A PORTION OF ONE LOT ON SAND HILL ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL DISTRICT

Mayor Bellamy opened the public hearing at 6:43 p.m.

Urban Planner Black Esselstyn said that this is the consideration of an ordinance to rezone a portion of one lot on Sand Hill Road from RM-7 Residential Multi-Family Low Density District to Institutional District. This public hearing was advertised on May 16 and 23, 2008.

The applicant is requesting a rezoning of a portion of a parcel from RM-6 to Institutional. The area of the entire parcel is 3.85 acres, but the area to be rezoned is only 0.57 acres. The majority of the parcel is essentially undevelopable, owing to its narrow shape, stream presence, lack of road access, topographic challenges, flood hazard areas, and the presence of a sewer line and easement. The unusual parcel outline was created when the interstate corridor divided properties in this area.

The portion proposed for rezoning abuts Sand Hill Road. Though roughly half an acre of the property close to Sand Hill Road is better suited for development, the property has remained on the market for a number of years, limited by the obstacles previously mentioned as well as the proximity to the interstate, which reduces its appeal for a residential use.

The applicant is interested in using the portion of the property for a model home, a building that would resemble a single-family residence but which would have to be classified as an office. Such an office use would not be permitted under RM6 zoning, but would be allowed in the Institutional district. Wishing to avoid the delay and expense of developing concept plans that might later change, the applicant elected to pursue a straight rezoning, recognizing the constraint that only rezoning a small fraction of the site would severely limit potential uses.

Of the less than 25,000 square feet of property proposed for rezoning, approximately 9,000 square feet would be reserved for setbacks and buffers. Other areas are impracticable for their development due to the topography, or could not be used for a building due to the proximity of the sewer line.

The applicant has expressed an interest in providing public access to an extensive part of the property bordering the creek for use as a greenway or nature trail. It should be noted that there is no written commitment of such a future action, and that, since this matter is under consideration as a straight rezoning, there is no way for City Council to add this as a condition. Similarly, it should be noted that if property or an easement is donated to the City of Asheville, there is no guarantee that the City will be able to construct the improvements necessary for a greenway within any specified period of time.

Further, as with the applicant's stated development intentions, the park proposition is provided as background information. The potential for a future passive recreational use for the eastern part of the parcel was one additional consideration used by staff in limiting the extent of the proposed rezoning; if the entire parcel were to be rezoned to Institutional, a landscape buffer more than a quarter-mile long might be required, even along a linear open space or greenway.

The proposed zoning district, Institutional, matches the zoning on the opposite side of Sand Hill Road. A section of the road right-of-way, measuring less than 0.3 acres, would also be rezoned to make this a seamless extension of the existing zoning district. The Institutional District was established to reserve land for the development of major educational facilities, major medical facilities and other complementary and supporting uses such as health related developments, office developments, and public services. Development standards for uses in this district are established to minimize conflict with adjacent land uses.

The existing zoning district, RM-6, Residential Multi-Family Low Density District was established to permit a limited range of low density multi-family housing types along with single-family detached and attached residences. This district is intended to provide a transitional area between single and multi-family areas, and to provide a compatible mixture of these housing types by limiting the size and density of multi-family development. This district is also intended for areas where low density multi-family development is appropriate but where environmental constraints and infrastructure limit development potential. Non-residential development normally required to provide the basic elements of a balanced and attractive residential area is also permitted. The Manufactured Housing Overlays that exist on the property would not be affected by the proposed rezoning.

As a straight rezoning request, the proposed rezoning, if approved, would present a formidable list of permitted uses; however, the size of the subject area and other constraints effectively limit the scope of future construction so as to render high-impact development impracticable. The rezoning would result in a split zoned parcel, but the line effectively divides the developable portion from the section with severe development constraints, and the boundary could be used in the future if the eastern portion is subdivided off for conservation.

At their February 6, 2008, meeting, the Planning and Zoning Commission voted 5-0 to recommend approval. There was no indication of neighborhood opposition at the meeting, nor had there been any communicated to staff; indeed, as of this writing, staff has received one communications regarding this request.

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

Pros:

- Proposed zoning district is highly compatible with areas to west and south.
- Limited size of affected area limits the potential impact of development.
- Proximity to interstate overpass limits interest for residential development.
- Infrastructure is present to support small-scale non-residential development.

Cons:

- Would result in a split-zoned parcel.
- Would result in a small loss of residentially zoned land.

The proposed rezoning could potentially provide some relief to the property owner for an unusually difficult piece of land with restrictive zoning, and the limited size of the affected area would temper the prospective impact of a more permissive zoning district.

Mayor Bellamy closed the public hearing at 6:48 p.m.

Mr. Esselstyn responded to various questions/comments from Council, some being, but are not limited to: what are the uses allowed in the Institutional District and would any of them be detrimental to people living nearby; does staff have any concerns about drainage or erosion from the site; why was the Institutional District chosen; and what is the height limitation in the Industrial District.

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. 3623. This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE

E. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE ASHEVILLE REGIONAL AIRPORT'S AIRCRAFT STORAGE HANGAR LOCATED AT 168 WRIGHT BROTHERS WAY, ALONG WITH MODIFICATIONS TO THE LANDSCAPING REQUIREMENTS

ORDINANCE NO. 3624 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE ASHEVILLE REGIONAL AIRPORT'S AIRCRAFT STORAGE HANGAR LOCATED AT 168 WRIGHT BROTHERS WAY, ALONG WITH MODIFICATIONS TO THE LANDSCAPING REQUIREMENTS

City Clerk Bureson 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.

City Attorney Oast also said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:54 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 Asheville Regional Airport's Aircraft Storage Hangar located at 168 Wright Brothers Way, along with modifications to the landscaping requirements.

Ms. Bernstein said that the applicant is requesting review of site plans for a new airplane storage hangar at the Asheville Airport. This project is considered a Level III review pursuant to Section 7-5-9(a)(1)b. of the UDO, which states "properties located within 1,500' of each other, under the same ownership and/or developed by the same developer over a period of 3 years or less shall be considered to be one development and reviewed as such." Ordinarily this project would be considered as a Level 1 on its own, however due to Section 7-5-9(a)(1)b. listed above and the projects approved in the past three years (Level 1 - May 2007; Level 2 - August 2005; Level 2 - March 2005), this is considered as a Level III review.

The project site is an 11.69 acre site located at the southwest corner of Wright Brothers Way and Aviation Way, just north of the Asheville Regional Airport passenger terminal and is zoned Industrial (Attachment to City Exhibit 3 - Aerial Map). Surrounding properties are also zoned Industrial and are all occupied by airport-related uses. The applicant is proposing to construct a 22,000 square foot aircraft storage hangar and associated parking area on a small portion of the site. The structure will be 42 feet in height (Attachment to City Exhibit 3 - Geometric Layout Plan).

Landscaping is required for this site and includes a street buffer, street trees along Wright Brothers Way and Aviation Way, vehicular use and building impact landscaping (Attachment to City Exhibit 3 - Landscape Plan). Due to the nature of the bulk of the parcel as impervious airport/runway-related surface, the applicant is requesting alternative landscaping to plant a small number of trees on the adjacent parcel to the south (property under same ownership but with a separate PIN. This request must be considered and approved by City Council.

A small parking lot with 21 spaces (1 handicapped) is included, adjacent to the hangar to the south and accessed from Wright Brothers Way. This lot exceeds the parking required by 20 spaces, however the parking area is also intended to serve adjacent hangars and nearby buildings. In addition, this lot aids in compliance with Federal Aviation Administration (FAA) and Department of Homeland Security Transportation Security Administration regulations to prohibit vehicles from aircraft operations areas (inside the fence). The project proposes a 5 foot sidewalk along Wright Brothers Way.

Additional aviation improvement projects are anticipated to be submitted by the Asheville Regional Airport and/or its carriers in the near future and these proposals may be evaluated by Planning Department staff as amendments to this Conditional Use Permit. The amendment request requires returning for review and approval by the Technical Review Committee and City Council, but does not require review by the Planning & Zoning Commission.

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

- (1) **That the proposed use or development of the land will not materially endanger the public health or safety.**
The project will meet State building code requirements and will be reviewed in detail by the Technical Review Committee 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.**
All land in the immediate vicinity of the site is also operated by the Asheville Regional Airport and supports private and public aviation. The proposed airplane storage hangar will support and complement adjacent uses. There are no significant or topographic features on the site that raise any conflict other than the need to plant some of the required landscaping offsite, due to the nature of the bulk of the parcel as paved apron area for flight craft.
- (3) **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting**

property.

Abutting property is also owned by the Asheville Regional Airport. The proposed airplane storage hangar supports and complements the existing uses, especially due to existing storage hangars being currently filled to capacity. It should not injure the value of abutting or adjoining 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 proposed airplane storage hangar is similar to other storage hangars in the immediate vicinity and is compatible with the adjacent public airport. This proposal is in harmony with the scale, bulk, coverage, density and character of the other uses in the area.

(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 2025 Plan identifies that the airport is a "major economic generator for the community, with an estimated \$199.8 million in annual direct, indirect and multiplier benefits, creating an estimated 2,956 jobs." Improvements to the airport, such as this one, assist in maximizing the efficiency and success of this regional transportation hub. General aviation additions are specifically stated as a needed long-term improvement of the Plan (pg. 146). Improvements to the Asheville Regional Airport indirectly support the City's goals relating to Economic Development and Sustainability, as maximizing the efficiency of the airport will make it easier for visitors (and residents) to travel to and from the area.

(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 proposed hangar is located just off I-26 at the Airport Road exit within the Asheville Regional Airport, which places the project in an easily accessible and appropriate location. The project has been reviewed by the Technical Review Committee and has been found to have adequate access to infrastructure.

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

Based on the proposed use of the subject project, it is reasonable to conclude that it would probably generate very little new traffic. The project will provide covered storage for airplanes and it will more than likely serve the airplanes that already exist. Therefore, the overall traffic impact in the immediate area of the subject project should be minimal.

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

This Level 3 project was approved with conditions by the Technical Review Committee on April 7, 2008, and recommended for approval by a (5-0 vote) by the Planning and Zoning Commission on May 7, 2008; there has been no opposition to the proposal.

Pros:

- Proposal contributes to the efficiency of operations at the Asheville Regional Airport.
- Parking lot will serve the needs of other existing storage hangars on the site and assist in complying with federal regulations.

Cons:

- None identified

Staff recommends approval of the airplane storage hangar, as well as the landscape modifications, however, they encourage the applicant to undertake a Master Planning process so that these small scale improvements don't need to go through a Level III review each time.

After rebuttal, Mayor Bellamy closed the public hearing at 6:57 p.m.

Based on the above findings and the analysis provided in the staff report, Councilman Mumpower moved to adopt Ordinance No. 3624, approving the conditional use permit adopting the Master Plan for the Asheville Regional Airport Authority Airport Storage Hangar, with the requested landscape modifications, subject to the following standard conditions: (1) The project shall comply with all conditions outlined in the TRC staff report dated April 7, 2008; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the TRC; (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

Newman and carried unanimously.

ORDINANCE BOOK NO. 24 – PAGE

V. UNFINISHED BUSINESS:

A. BUDGET REVIEW

Chief Financial Officer Ben Durant said that at this third Fiscal Year (FY) 2008-09 budget worksession and he anticipated Council further discussing its budget priorities for the upcoming fiscal year. In addition, staff will be available to provide follow-up on any issues that have been discussed at previous worksessions.

The FY 2008-09 Proposed Budget for the General Fund was presented to City Council at the May 13th formal meeting. At the May 20th worksession, staff presented an overview of the FY 2008-09 Proposed Budgets for the City's seven Enterprise Funds and provided further information on the proposed FY 2008-09 General Capital Improvement Program. The agenda for the third worksession on May 27th includes additional time for City Council to discuss its budget priorities for FY 2008-09. Staff will be available to answer questions and provide follow-up on issues that have been discussed at previous worksessions. Staff has also provided in a separate memorandum answers to questions raised by City Council at both of the earlier budget worksessions and during presentation of the Quarterly Financial Report on May 13th.

Staff recommends that Council continue discussions of its FY 2008-09 budget priorities and provide staff with direction on future budget worksession agendas.

Throughout discussion, City staff responded to various questions/comments from Council, some being, but are not limited to: what percentage of our transit budget comes from fares and how much of a subsidy does that result in when you put all the other contributions that are made from City, state and federal tax dollars; need to look at transportation in a comprehensive manner; departments are so constrained they can't make the kind of investments in efficiency that will save the community money in the long run (fleet, building management, etc.); need for departments to find some creative options to begin managing the rising energy price in a way that is more fiscally responsible; need to look at ways to increase transit ridership; Fund Balance was used to take care of some important needs and request to see that grow in the future; this Council is providing fewer subsidies to festivals and non-profits and looking for ways to allow users of the golf course to pay their own way; need for a good solid Fund Balance; is there any direct correlation between the existence of drug activity and gang activity in close proximity to one another; and how bad is our gang problem in a typically nice neighborhood.

Council members made various comments regarding the budget outlining their concerns and supports.

City Manager Jackson said that regarding the transit route study, we have gone through the Request for Proposals and will soon bring recommendations to Council so they have facts to make long-range decisions about where we do service and how we service.

Mayor Bellamy said that she continues to get correspondence about our gang problem. She would like to see more support for some solutions to the issues of shootings in neighborhoods. She advocated finding more resources. She reviewed some applications that didn't get funding from the Community Development Block Grant (CDBG) program and asked Council to support finding some funding for some alternative initiatives to address gangs. The addition of the two gang officers is good, but we need more community based solutions.

Councilman Newman, member of the Housing & Community Development Committee, said that they reviewed the applications for CDBG funding this year and it was a difficult process due to the limited funding available. There were some strong proposals for important initiatives in the community to address gangs and job opportunities for young people.

In response to Councilman Newman, Councilwoman Cape said that the Planning & Economic Development (PED) Committee did not review any applications as there is no process for that Committee to be a funding mechanism.

Councilman Mumpower felt the gang issue is a distraction from the core issue of the drug thug culture and open air drug market. Council has made a commitment to eliminate the open air drug market and has asked the Police Chief to task that goal. He felt that if the Police Chief needs more resources, he should come to Council with specific requests and at that time Council can provide him with additional assistance.

Councilwoman Jones would support revisiting specific proposals already received either through the Housing & Community Development Committee or through the Outside Agency Committee requests that address the gang issues.

After discussion, it was the majority of Council's consensus to review the proposals received by the Housing & Community Development Committee and/or the Outside Agency Committee that addressed gangs and/or job opportunities for young people and directed staff (including the gang prevention officers) to narrow down the funding proposals with a rating system (around gang prevention issues) to help Council made some decisions, along with finding resources to support these initiatives. City Manager Jackson said that he would provide Council with the requested information before June 24 - the date the budget is scheduled to be adopted.

City Attorney Oast noted that in both houses the Street Gang Violence Prevention Act has been introduced and he will provide Council with a report on that.

Mayor Bellamy noted that the majority of this Council has supported our Police Chief when he has requested additional funding for police officers. As she did on May 13, 2008, she asked for staff to provide an analysis of how much has been spent in public safety over the past three years. Regardless of that amount, we still have gangs and she wants our neighborhoods and children to have a better solution to gangs.

B. RESOLUTION NO. 08-113 - RESOLUTION OPPOSING HOUSE BILL 2367 ESTABLISHING A MORATORIUM ON INVOLUNTARY ANNEXATIONS

City Attorney Oast said that this is the consideration of a resolution expressing opposition to House Bill 2367, adopting a moratorium on annexation

As Council was advised last week, the House Select Committee on Municipal Annexation has introduced a bill that would impose a moratorium on involuntary annexation until June 30, 2009. As drafted, the bill would prohibit cities from initiating annexation, and would delay the effective date of annexations that are in progress, including annexations that have been completed, but are the subject of litigation. As indicated in my Staff Report of May 20, 2008, this would affect four annexations currently being litigated by the City.

The resolution explains how the City of Asheville approaches annexation, and how the proposed moratorium would affect those annexations that are being challenged. It also directs me to transmit a copy of the resolution to our local delegation, the President pro tempore of the Senate, and the Speaker of the House.

This action is consistent with the Strategic Operating Plan in that it promotes the continued availability of one of the tools for planning identified in the 2025 City Plan.

Pros:

- Continued availability of annexation as an element of the City's comprehensive plan
- No delay in effectiveness of completed annexations beyond termination of litigation

Con:

- None noted

Councilman Mumpower said that he is against the concept of forced annexation but he is also against the state trying to artificially control the City with a moratorium before they are willing to actually deliberate on annexation policies. He asked the resolution be amended to read as follows: "(1) The Asheville City Council opposes House Bill 2367, and opposes any bill that would have the effect of suspending the power of municipal annexation for North Carolina cities prior to legislative action on annexation policies." He felt if they want to deliberate annexation, fine, but don't free us in the interim while they take their time. He felt the moratorium is an artificial way of controlling the process without assuming responsibility for action.

Councilwoman Cape suggested the following amendment: "(1) The Asheville City Council opposes House Bill 2367, and opposes any bill that would have the effect of suspending the legislatively approved power of municipal annexation for North Carolina cities."

Councilman Newman suggested the following amendment: "(1) The Asheville City Council opposes House Bill 2367."

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

Councilwoman Cape moved for the adoption of Resolution No. 08-113, with the amendment to (1) to read "The Asheville

City Council opposes House Bill 2367." This motion was seconded by Councilman Newman and carried unanimously.

RESOLUTION BOOK NO. 31 – PAGE 186

VI. NEW BUSINESS:

A. ORDINANCE NO. 3625 - ORDINANCE MAKING MODIFICATIONS TO THE SOLID WASTE MANAGEMENT ORDINANCE

Solid Waste Manager Wendy Simmons said that the purpose of this item is to review modifications to the Solid Waste Management Ordinance to bring the ordinance up-to-date in regards to Sanitation Division operations and enforcement policies to facilitate more effective compliance actions.

She said that the ordinance (1) was last amended in 1996; and (2) is outdated when compared to 2008 practices.

The new ordinance (1) includes automated trash collection program; (2) up to date trash and brush collection policies; and (3) streamlines enforcement.

Revisions are proposed for the City's Solid Waste Management Ordinance (Chapter 15 of the Code of Ordinances) to ensure it more accurately reflects the current operations and policies of the City's Sanitation Division. The underlying principle guiding all Sanitation Division operations is that all customers, including households and businesses, receive an equal level of service. To continue to operate within this guiding principle, updates to Chapter 15 are necessary.

Current Operational Updates:

In 2000, the City implemented the use of 95 gallon roll-carts in conjunction with automated side loading garbage trucks to collect trash. The city's ordinance has not been updated since the automated trash collection system was introduced. With the implementation of the automated program, specific policies and procedures were put in place via department policy; however, to facilitate enforcement action(s) for violations revisions to the ordinance are necessary.

Considerable changes were made throughout the ordinance to reflect current Sanitation Division operations. The following is a listing of key proposed changes:

- **Automated Waste Collection:** The switch to an automated collection system required comprehensive revisions throughout the draft document. The *definitions* section of the chapter was revised and enhanced. Current departmental policies and rules were incorporated into the draft changes to reflect operational protocols put into place immediately after the automated program began in 2000.
- **Commercial Establishments:** Ordinance language was updated to be consistent with the current ordinance regarding: 1) Clear definition of collection services to commercial properties, and 2) that 'multiple residential complexes' are 'one single unit' and that such properties are provided one (1) roll cart that is collected once per week. Additional roll carts can be rented from the city, but they too are only collected once per week (see Section 15-40).

Enforcement and Penalties:

The enforcement section of the chapter has been streamlined to allow for more aggressive corrective measures when necessary. The structure of fines has also been revised to better reflect the cost of noncompliance. Benchmark data from other N.C. municipalities regarding current enforcement and penalties are illustrated in the following table:

Local Government	Initial Compliance Deadline	Penalty	Other
Asheville	7 days	\$50	Other penalty options: community service, imprisonment for not more than 30 days, bill cost to City for correction of violation
Buncombe County	15 days	\$50-\$500	Other penalty options: imprisonment for not more than 30 days, bill cost to County for correction of

			violation
Burlington	Flexible	\$50-\$500	Other penalty options: imprisonment for not more than 30 days, \$25 fee for delinquent payments
Greensboro	14 days	\$75	
Hickory	14 days	\$75	
High Point	Flexible	\$500	
Kernersville	Flexible	\$75-\$500	Other penalty options: imprisonment for not more than 30 days

*State law references: Violation of city or town ordinances declared a misdemeanor punishable by fine not exceeding \$500.00 or imprisonment not exceeding 30 days, G.S. 14-4

Asheville's enforcement and penalties:

In 2007, 864 complaints were investigated by the Sanitation Division. Most complaints were resolved without the need to issue written notices of violation. The table below notes the quantity and type of enforcement actions taken by the Division.

2007 Enforcement & Penalties

Complaints investigated	864
Written warnings issued	147
Notice of violations issued	80
Citations collected	5

The five penalties collected in 2007 varied in magnitude, and the fine amounts were as follows: \$50, \$150, \$200, \$550, and \$8,000.

- Proposed Enforcement and Penalty changes:
 - Compliance timeline: The current ordinance requires that violator(s) be given at least seven (7) days to correct an issue of non-compliance. This language has been removed to give enforcement staff the ability to set a variable compliance deadline not to exceed thirty (30) days. A single extension not to exceed 30 days can also be issued under the updated version. This flexibility allows for more appropriate compliance timelines to be set by enforcement staff. See Section 15-52.
 - Automated rollout container usage: The ordinance proposes to restrict the use of city-owned automated rollout containers to provide remedy against businesses or residents who might improperly use such receptacles. See Section 15-37(b).
 - Street refuse receptacle usage: The ordinance proposes to prevent residents and businesses from using city-owned street refuse receptacles to dispose of their waste. Street refuse receptacles are intended for pedestrian use, and the revisions will restrict businesses and residents from improperly using the receptacles. See Section 15-36(c) and 15-40(d)
 - Brush collection: The ordinance will clarify the Division's current policy to not collect brush cut by private contractors by providing greater enforcement authority. See Section 15-38 (g).
 - Penalties: The current ordinance lists a penalty at \$50.00 per day for each day a violation exists. The revised ordinance proposes to increase such penalties to \$100.00 per day for each day the violation exists (for up to 30 days). If the violation continues after 30 days, the penalty shall decrease to \$20.00 per day. In no event shall the amount of the civil penalty exceed \$5000.00. These changes are proposed to be more in line with administrative costs to the city for such noncompliance. See Section 15-52.

The revisions of the Solid Waste Ordinance maintains current solid waste and recycling trends, ensuring proper management of waste applicable to greening initiatives and sustainable use of resources.

Pros:

- Up-to-date ordinance
- Fees more reflective of cost of non-compliance, making the ordinance more effective
- Compliance timeline can be set based on severity of non-compliance
- Strengthened enforcement for improper use of city-owned automated rollout containers and street refuse receptacles

- Strengthened enforcement for improper disposal of brush cut by private contractors

Cons:

- Fines increase by \$50.00
- Elimination of fixed seven (7) day compliance deadline

Fiscal Impact:

- Minimal increase in fines collected for non-compliance with city ordinance
- Negligible fiscal impact

There was a brief discussion, initiated by Councilwoman Jones, about the citation for violation decreasing after 30 days.

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. 3625. This motion was seconded by Vice-Mayor Davis.

Mayor Bellamy expressed concern that based on the narrowness of the definition of "contractor work" this ordinance may penalize families or senior citizens who can't afford to have a tree removed.

In response to Mayor Bellamy, Ms. Simmons said that she could add language to the ordinance regarding storm damage or wind. She read provision (g) in the proposed ordinance as follows: (g) Contractor Work: Tree and shrubbery branches, limbs and trimmings cut by persons engaged in landscaping or tree service enterprises or by other commercial or for-hire persons or those accumulations resulting from land clearing operations shall not be collected by the City. Such branches or limbs and trimmings shall be collected and removed by the commercial or for-hire person doing the cutting or trimming."

City Attorney Oast felt that as the provision is written, the ordinance would not preclude, in the event of storm damage, people from dragging tree branches to the street to be collected. He felt that the provision accommodates the interest of people who want to clean up their own storm damage and addresses the issue of the people who are doing it for-hire.

After a short discussion Mayor Bellamy's concern, Assistant City Attorney Martha McGlohon suggested that provision (g) be amended to read: "Contractor Work: Tree and shrubbery branches, limbs and trimmings cut by persons engaged in landscaping or tree service enterprises or by other commercial operations resulting from land-clearing operations shall not be collected by the City. Contractor work shall be defined as any work engaged in for-profit and the removal of such branches, trimming or land-clearing debris shall be performed at the expense of the contractor."

Councilman Mumpower withdrew his motion to adopt Ordinance No. 3625 as he did not feel the language was sufficient to address Mayor Bellamy's concern.

Councilman Newman then moved to adopt Ordinance No. 3625, with the following amendments (1) the modified language of provision (g) as read by Assistant City Attorney McGlohon; and (2) that the penalties remain at \$100 per day and not decrease after 30 days. This motion was seconded by Councilwoman Jones and carried on a 4-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 – PAGE

B. RESOLUTION NO. 08-114 - RESOLUTION APPROVING ADDITIONAL HOUSING TRUST FUND FUNDING TO VOLUNTEERS OF AMERICA FOR THE CONSTRUCTION OF 63 UNITS OF AFFORDABLE SENIOR RENTAL HOUSING AT 138 SPRINGSIDE ROAD

Community Development Director Charlotte Caplan said that this is the consideration of a resolution approving a \$54,731 Housing Trust Fund (HTF) loan for the development of sixty-three (63) units of affordable senior rental housing.

Staff has received an application for funding from Volunteers of America for their project at 138 Springside Road in South Asheville. Funding for this project was originally approved in March, 2007 in the amount of \$445,269. The original application was for \$500,000; however, funds were not available at that time to fund the entire request. Due to a declining tax credit market and increasing construction costs, the additional funds are now urgently needed to close a substantial funding gap and allow the project to move forward. The City has also committed \$164,077 in HOME funds to this project.

The current balance in the Housing Trust Fund is \$561,666. Request was reviewed and recommended for approval by the

Housing and Community Development Committee on April 21, 2008.

This action complies with the Strategic Operating Plan in that the project is supportive of the City's efforts to provide safe, decent affordable housing to the citizens of Asheville.

In the Consolidated Housing & Community Development Action Plan, this project addresses the plan's highest priority of developing affordable rental housing.

Pros:

- Allows project creating 63 units of affordable housing to move forward.
- Leverages \$5.8 million of private equity through the low-income housing tax credit program.
- 30 years of guaranteed affordability.

Cons:

- Further increases in construction costs could still jeopardize the project.
- Designation as senior housing does not meet the affordable housing needs of other age groups within the population.

There will be no additional impact on the general fund since funds have already been allocated to the Housing Trust Fund. The project will increase the current tax base by an estimated \$5 million.

Staff recommends that City Council adopt a resolution approving \$54,731 in additional funding to Volunteers of America for the project at 138 Springside Road.

Councilman Mumpower could not support the motion as this is a subsidized project with borrowed federal dollars. He felt we are contributing further to our \$10 Trillion federal deficit that must be paid back by our children and grandchildren.

Councilwoman Jones said that these are not federal dollars being borrowed, but City dollars that have been allocated.

Mayor Bellamy also noted that this money will be paid back by the developer.

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

Councilwoman Jones moved for the adoption of Resolution No. 08-114. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 187

C. RESOLUTION NO. 08-115 - RESOLUTION AUTHORIZING A GRANT TO THE HOUSING AUTHORITY OF THE CITY OF ASHEVILLE FOR A STUDY OF THE FEASIBILITY OF SEEKING A HOPE VI GRANT

Community Development Director Charlotte Caplan said that this is the consideration of a resolution to grant \$18,000 to the Housing Authority of the City of Asheville (HACA) for a study of the feasibility of seeking a HOPE VI grant.

HOPE VI is a HUD program for revitalizing distressed public housing developments, through rehabilitation or demolition and new construction, to create mixed-finance and mixed-income housing that is radically different from traditional public housing "projects".

In 2004, Council allocated \$18,000 for a preliminary study to establish the feasibility of seeking HOPE VI funds to redevelop one or more of the Housing Authority's public housing complexes. The consultant withdrew before the contract was finalized, but the funds - part of a small general fund capital appropriation for "Affordable Housing Infrastructure" - have been preserved in the expectation that the Housing Authority would continue to explore the concept.

Over the last few months, staff has worked with the Housing Authority to revive the study and find a new consultant. Through a properly conducted RFQ process, HACA has selected Lawrence D. Holt & Associates and developed a scope of work.

The study is deliberately limited to exploring the feasibility of applying for HOPE VI funding or of accessing other major financing sources (a "HOPE VI look-alike). The next step in the process, developing a detailed proposal, would be a major undertaking which would likely cost in excess of \$200,000. Only about five HOPE VI grants are available each year nationwide and only highly-developed proposals have any chance of success.

This action complies with the Strategic Operating Plan in that the proposed study directly addresses the affordability objective: "Continue to pursue redevelopment of public housing with a HOPE IV-type project".

A HOPE VI project has the potential to address multiple priorities of the Consolidated Housing and Community Development Plan (rental housing, homeownership, long-term affordability, efficient use of land, etc.).

Pros:

- Funds initial step towards obtaining major outside investment for the revitalization of distressed public housing.
- Will provide information needed to determine whether or not to proceed with more costly planning.

Con:

- Does not address the desirability and social consequences of undertaking a HOPE VI project.

Council has already appropriated sufficient funds.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a grant agreement with the Housing Authority, in the amount of \$18,000, for a HOPE VI feasibility study.

Councilman Mumpower spoke against spending \$18,000 for a feasibility study that we have very little chance of obtaining a HOPE VI grant.

At the request of Councilwoman Cape, Mr. David Asher explained that the scope of the work was expanded to include accessing other major financing sources (a "HOPE VI look-alike).

Councilman Newman felt that for a community of our size we have a very high percentage of land in public housing. He was proud Council is taking their first step in looking seriously at the question of "Is the current configuration of public housing developments we have in the City the same way we want them to look in 50 years from now?"

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

Councilwoman Jones moved for the adoption of Resolution No. 08-115. This motion was seconded by Vice-Mayor Davis and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 188

D. RESOLUTION NO. 08-116 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A THREE-YEAR CONTRACT FOR TECHNICAL SERVICES WITH THE LAND-OF-SKY REGIONAL COUNCIL TO MANAGE THE ENVIRONMENTAL PROTECTION AGENCY BROWNFIELDS GRANTS IN ASHEVILLE'S RIVER DISTRICT

Urban Planner Stephanie Monson said that this is the consideration of a resolution authorizing the City Manager to execute a three year contract for technical services with Land of Sky Regional Council (LOSRC) for grant administration services for the City of Asheville for EPA Brownfields assessment grants.

On August 14, 2007, Asheville City Council authorized LOSRC to submit two brownfields grant applications to EPA on behalf of the City of Asheville. The applications were successful, and on April 10, 2008, the City of Asheville was recognized as the recipient of \$400,000 in assessment for hazardous materials sites and petroleum contaminated sites in Asheville's River District.

The proposed management structure of the program, as described in the technical services agreement entered into by LOSRC and the City of Asheville and as submitted to the EPA in the successful grant application, proposed that LOSRC would perform the administrative function of the grants for the City. The City of Asheville does not currently have staff that possess expertise in managing a brownfields program; alternatively LOSRC has managed a very successful Regional Brownfields Initiative since 2002. Staff has ascertained that the costs of utilizing LOSRC services would be considerable less to the taxpayer than redirecting resources internally or requesting additional funding for a new program.

The execution of this contract would support the implementation of Council's Strategic Plan, most directly in the area of Sustainability, e.g. by promoting sustainable, high density infill growth that makes efficient use of existing resources; and by pursuing a stronger riverfront redevelopment partnership with other agencies and governments.

This action complies with the Wilma Dykeman Plan in that the Wilma Dykeman Plan contains three focus areas: appropriate zones for development; an economic revitalization analysis/recommendation; and transportation/roadway changes to implement greenways and revitalization. The River District Brownfields Program will support all three of these areas, mainly through the preservation of undeveloped land and historic and cultural sites (i.e. via infill development). LOS' existing RBI has identified over 200 sites in the River District area as underutilized.

This action also complies with the River Redevelopment Plan in that this redevelopment plan mostly frames the issues that have been identified in prior plans and public comments (such as the Wilma Dykeman Plan); the summary section of this plan is an effort to strategize funding possibilities for implementation; The River District Brownfields Program not only complies with the intent of the plan but strengthens it by providing another possible funding mechanism for plan implementation.

In addition, this action complies with the Asheville's 2025 Plan in that the River District Brownfields Program directly supports Goal 1, Strategy 6 of the Land Use and Transportation section of the 2025 plan: "The City should pursue compatible adaptive reuse and infill development in order to actively promote appropriate development and redevelopment within the City and its ETJ.; Through the City's Economic Development office, identify and market brownfield sites, giving preference to the development of these sites". This initiative also indirectly supports several other goals, and does not conflict with any goals.

Pros:

- City promotes sustainable infill development
- City promotes safety of citizens through potential clean up of hazardous materials in the River District
- City will expand its toolbox of incentives for sustainable development without having to redirect current or direct substantial new resources.
- No new city staff required to administer this three year grant program.

Con:

- External management of a City of Asheville initiative.

The cost to administer the program/grants was included as part of the successful grant application to EOA and is to be paid for by the brownfields grant awards in an amount not to exceed \$180,000. This contract and the associated costs are to cover the entire three-year period (contract covers July 1, 2008, to September 30, 2011).

Staff recommends Council authorize the City Manager to execute the contract.

Ms. Kate O'Hara, representing the Land-of-Sky Regional Council, spoke in support of the contract.

Ms. Monson and Ms. O'Hara responded to various questions/comments from Councilman Mumpower, some being, but are not limited to: what percentage of these dollars will go into staff administration vs. actual clean-up; and how hard is it to assess when we have a clean-up of a brownfields problem and have we invested prior dollars in doing that.

Councilman Mumpower could not support the EPA's bureaucratic process, especially with the consideration that all of the dollars are coming from borrowed funds that our children and grandchildren will be paying for.

Councilwoman Cape said that we have success stories in our community thanks to the brownfields work. She was very supportive of the brownfields program.

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

Councilwoman Cape moved for the adoption of Resolution No. 08-116. This motion was seconded by Councilwoman Jones and carried on a 5-1 vote, with Councilman Mumpower voting "no."

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VII. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of May 9 – 22, 2008: Enterprise (Streets), James O. Dawkins Jr. (Police), J.W. DeGroot (Streets), Dylan Schepps (Parks & Recreation), Gary J. McDaniels (Water), Jimmy L.

Mills Jr. (Transit), Greg Mosher (Water), Kim Morris (Water), Rebecca M. Sandoval (Police), Carroll Mease (Water), AT&T (Fire) and Robert Bishop (Fire).

These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Closed Session

At 8:32 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) to consider the qualifications, competence, performance, character, fitness, and conditions of employment 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 N.C. Gen. Stat. sec. 160A-168, the Personnel Privacy Act - The statutory authority 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 attorneys must be preserved, including litigation involving the following parties: Louise Pack Metcalf, Barbara Pack Holcombe, Michael Lawrence, Black Dog Realty, LLC, and Buncombe County. This motion was seconded by Councilwoman Jones and carried unanimously.

At 9:30 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 9:30 p.m.

CITY CLERK

MAYOR